

Phil Williams

From: Melinda Parton
Sent: Tuesday, March 20, 2012 5:21 PM
To: Terry Mason
Subject: RE: JLL Contract- Project Management Question

Good.

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
(615) 401-7770

From: Terry Mason [<mailto:Terry.Mason@cot.tn.gov>]
Sent: Tuesday, March 20, 2012 2:33 PM
To: Chloe Shafer
Cc: Melinda Parton
Subject: RE: JLL Contract- Project Management Question

Hi Chloe,

Just tried to give you a call and left a message. If I recall correctly, the conversation involved using JLL to manage projects in lieu of STREAM project managers. It was our position that G.11. was related to projects involving facilities management services related to the contract and not to "capital projects" project managers.

Feel free to give me call if you still have any questions.

Thanks, Terry

Terry Mason, CGFM
Contract Review Administrator
Comptroller Procurement Oversight
terry.mason@cot.tn.gov


From: Chloe Shafer [<mailto:Chloe.Shafer@tn.gov>]
Sent: Tuesday, March 20, 2012 1:29 PM
To: Terry Mason
Cc: Melinda Parton
Subject: JLL Contract- Project Management Question

Terry,

Hope all is well. I wanted to follow up on the discussion we had about this contract back when we were putting final revisions together. My recollection is that you had some specific thoughts as to how the project management services could be used under this contract (listed in the scope of services under Facilities Management). I don't believe I fully understood your comments and as we move forward want to make sure that I have a handle on them. Could you give me a call when you have time to discuss?

Thanks,
Chloe

Chloe Truslow Shafer, Esq.
Real Estate Compliance Director
Department of General Services
312 Rosa L. Parks Avenue
Nashville, Tennessee 37243
Phone: [REDACTED]
Mobile: [REDACTED]
Email: chloe.shafer@tn.gov

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Rhonda Bratcher

From: Justin Wilson
Sent: Wednesday, May 16, 2012 4:27 PM
To: Melinda Parton
Subject: JLL- densification, etc

Herbert Slatery and Mark Cate of the Governor's office can to see me this afternoon. They wanted to amend the existing contract with JLL on state real property to cover the preplanning that is in this year's budget and some evaluations of the existing state real estate. They describe it as a continuation of the existing contract that was generally within its scope. I said that it sounded a little like a sole source but that they may well have good justification. They said time is of the essence, etc. I said that I would make sure that we reviewed any amendment they submitted very promptly and tell them what problems if any we had. I also asked them to let me know as soon as they were ready for us to look at the amendment.

My guess is that this is probably a sole source with good justification but I have not yet seen anything.

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Justin P. Wilson
Comptroller of the Treasury
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STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

TO: File

FROM: Steven G. Cates, Commissioner *SGC*

DATE: May 22, 2012

SUBJECT: JLL Contract Amendment; Basis for Negotiation

I have reviewed a proposed amendment to the Facilities Management contract between the Department of General Services and Jones Lang LaSalle Americas Inc. (JLL), along with supporting documents from staff, and I have determined that (1) the negotiated proposal represents fair pricing under industry standards and (2) the benefits of negotiating this amendment outweighs the benefit to the public that would result if the scope of services were to be put out for competitive bid.

The scope of work contained the proposed amendment includes the pre-planning of the State of Tennessee's capital projects and project management of the State's ongoing T3 "densification" project. Based on my review of the staff's supporting documents, I have found that the vendor's cost proposals for both of the aforementioned units of work represent fair pricing to the State well within industry standards. According to industry standards, pre-planning costs should run 0.5% or less; the vendor's negotiated proposal of \$1,150,000 is only 0.23% on \$500 million in anticipated planning on capital projects. Under industry standards, project management costs should be 2.5% to 4.0% of total project cost. JLL's negotiated cost proposal of \$2,344,000 represents 3.4% of the total anticipated project cost of \$69.5 million.

The scope of work covered by the proposed amendment is a critical portion of a strategic initiative by the State to save millions of dollars through better planning of State building projects and management of a space realignment project which is aimed at reducing one (1) million square feet in presently leased space. Considerable monies have been appropriated and will soon be available for the services covered in the amendment. Any delay in commencing this initiative will result in lost saving. Negotiation of the proposed amendment would enable the State to obtain these services immediately and avoid the three (3) month or more delay that would ensue if the scope of work were put out for competitive bidding.

Finally, JLL has been on contract with the State for most of the past year conducting a comprehensive assessment of the State's space needs and the savings which could be realized through more efficient allocation of office space. The information and knowledge gained by JLL in performing these duties has made JLL uniquely qualified to provide the State the most accurate information and planning in the most efficient manner. It is my opinion that no other vendor presently possesses those unique and valuable qualifications, and that negotiating the proposed amendment with JLL preserves that benefit to the public that outweighs the benefit to be gained from putting the scope of work out for competitive bid.

Based on the foregoing, I have determined that accepting the proposed negotiated amendment to the JLL contract serves the State's best interests.

Phil Williams

From: Melinda Parton
Sent: Thursday, May 31, 2012 8:11 AM
To: Bob Oglesby
Subject: RE: Amendment to Facility Master Plan and Facilities Assessment Contract

The amendment and four copies were brought by Mark Cates and Herbert Slatery to the Comptroller on May 18th along with the DGS policy and procedure. I reviewed both and provided a marked up copy of the DGS policy and procedure for Comptroller to provide to Mark Cates and Herbert Slatery this past Friday, May 25th. My recommendation to the Comptroller was to provide the marked up policy and procedure to Mark Cates and Herbert Slatery which indicates SBC approval is required of the policy and that we could work through any issues in time for approval at the June 14th SBC meeting and that the amendment was not ready to be approved and would need some corrections as well and questions answered.

Regarding the Amendment to the JLL contract, the goal would be to hopefully have all issues and questions addressed to move forward with the amendment by the SBC Meeting as well, but I wanted to meet with you and Rich to give you my feedback and any from other staff members as well regarding the amendment, which should include comments regarding the policy too. Then have Rich work with Chloe to get the amendment in a format and answer any questions we have before the 14th SBC meeting.

This is where we are at this point with both the policy and amendment. Hope this helps and thanks for getting that item on the agenda for 9 am. This morning.

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

From: Bob Oglesby [<mailto:Bob.Oglesby@tn.gov>]
Sent: Thursday, May 31, 2012 7:29 AM
To: Melinda Parton
Subject: Re: Amendment to Facility Master Plan and Facilities Assessment Contract

Yes. The issue is as I understand it they are planning on bringing the change in master plan scope budget and funding to preagenda this am and that the amendment is signed. Is that not correct? I guess we can discuss w Mark or Herbert this am and figure out the next step then...

From: Melinda Parton [<mailto:Melinda.Parton@cot.tn.gov>]
Sent: Wednesday, May 30, 2012 05:39 PM
To: Bob Oglesby
Subject: RE: Amendment to Facility Master Plan and Facilities Assessment Contract

I thought we were discussing the policy and not the amendment. The amendment is not in a format that it is close to moving forward. In my email I wanted to set down and go over my thoughts and concerns about the amendment with you and Rich and staff members if they wanted to attend so Rich would get the benefit of what I generally am looking

for and concerned with from the Comptroller's perspective so he could communicate with Chloe on concerns and formatting of amendments to make sure it is in good form for review.

Does that make sense to you?

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
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[REDACTED]

From: Bob Oglesby [<mailto:Bob.Oglesby@tn.gov>]
Sent: Wednesday, May 30, 2012 4:02 PM
To: Melinda Parton
Subject: RE: Amendment to Facility Master Plan and Facilities Assessment Contract

sure but it will have already been discussed at PreAgenda

Bob Oglesby, AIA, LEED AP | State Architect
Office of the State Architect | Tennessee
615.741.2388 www.tn.gov/finance/OSA

"Good Business, Great Customer Service"

From: Melinda Parton [Melinda.Parton@cot.tn.gov]
Sent: Wednesday, May 30, 2012 2:42 PM
To: Georgia Martin; Bob Oglesby
Subject: FW: Amendment to Facility Master Plan and Facilities Assessment Contract

Can we include this on the list of items to discuss at the Friday meeting at 10:00 am since the same folks would be involved?

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

From: Joy Harris [<mailto:Joy.Harris@tn.gov>]
Sent: Wednesday, May 30, 2012 11:53 AM
To: Jonathan Rummel; Melinda Parton; John Carr; Bob Oglesby; Rich Cardwell
Cc: Terry Mason; Mary Anne Queen
Subject: RE: Amendment to Facility Master Plan and Facilities Assessment Contract

I would like to participate. Sorry for the delayed response.

Thanks!

Joy

Joy Harris
Public Policy Advisor to the Treasurer
Tennessee Department of Treasury
State Capitol, First Floor
600 Charlotte Avenue
Nashville, TN 37243
Ph: [REDACTED]
Fax: [REDACTED]
Joy.Harris@tn.gov

From: Jonathan Rummel
Sent: Wednesday, May 30, 2012 9:47 AM
To: Melinda Parton; Joy Harris; John Carr; Bob Oglesby; Rich Cardwell
Cc: Terry Mason; MaryAnne Queen
Subject: RE: Amendment to Facility Master Plan and Facilities Assessment Contract

Yes, I will be happy to participate.

Jonathan

From: Melinda Parton [<mailto:Melinda.Parton@cot.tn.gov>]
Sent: Friday, May 25, 2012 4:15 PM
To: Joy Harris; Jonathan Rummel; John Carr; Bob Oglesby; Rich Cardwell
Cc: Terry Mason; MaryAnne Queen
Subject: Amendment to Facility Master Plan and Facilities Assessment Contract

Folks,

Wanted to give you a heads up regarding a potential agenda item for the June SBC meeting. Attached is DGS' Contracting Communications and Negotiations Policy and Procedures document (Marked up with my comments and suggested changes) and an amendment to the contract for FRF Facility Master Plan and Facilities Assessment Contract that was provided to the Comptroller for review. As provided in the marked up document of the policy and procedure, we believe this requires SBC approval and DGS' expectation is to obtain approval of both the policy and procedure and the JLL Amendment at the June SBC meeting.

Terry and I have reviewed the JLL Amendment, while we don't have a problem with the additions of scope, which I believe to be within the original scope and intent of the original contract (original contract attached) I would like to meet with Bob and Rich to go over our comments and recommended changes and have Rich work with Chloe to address changes and clean up that is needed to put the amendment in a final format that we would feel comfortable is ready for approval by the SBC.

Please let me know if you would like to participate in the meeting or if you have comments regarding both documents that I could incorporate into our comments for Rich and Chloe to work on so we can meet DGS expectations to have these two documents ready for approval by the June 14th SBC meeting.

If you have questions, please let me know.

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

Articulate
the Exception

6/6/12

FIRST AMENDMENT TO CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
JONES LANG LASALLE AMERICAS, INC.

THIS FIRST AMENDMENT TO CONTRACT BETWEEN THE STATE OF TENNESSEE, DEPARTMENT OF GENERAL SERVICES AND JONES LANG LASALLE AMERICAS, INC. (this "First Amendment") is made and entered into by and between THE STATE OF TENNESSEE ("State"), and JONES LANG LASALLE AMERICAS, INC. ("Contractor").

WITNESSETH:

WHEREAS, State and Contractor are parties to that certain Contract between the State of Tennessee, Department of General Services and Jones Lang LaSalle Americas, Inc., commencing March 1, 2012 (the "Original Contract"); and

WHEREAS, Contractor's performance under the Original Contract has given Contractor a unique and unparalleled understanding of the following (the "State Specific Factors"): (i) the condition, use and capacity of the facilities owned by the State; (ii) the size, use, quality and quantity of spaces leased by the State from third parties; (iii) the future space needs of the State; (iv) the State's ability to make changes to its portfolio of owned and leased facilities in response to anticipated future needs; (v) the culture and business needs of each State agency housed in owned or leased facilities; and (vi) the specific options available to the State to make changes in its owned and leased portfolio; and

Project T3 Leadership:

WHEREAS, a "Space Housing Utilization Plan" for the current period through the next five (5) years (the "Near Term Plan") is a deliverable under the Original Contract, and the Near Term Plan serves as a roadmap for the State initiative commonly known as "Project T3"; and

WHEREAS, because funding for Project T3 will become available to the State in the FY 2012/2013 budget, the State is in a position to be able to execute the Near Term Plan much more quickly than was anticipated when the State began the procurement effort that led to the execution of the Original Contract; and

WHEREAS, it will be critical to the success of Project T3 that Project T3 be led by a resource with the capacity, expertise and experience to assist the State in executing the coordinated move management, hoteling, master schedule preparation, budget preparation, project management for pre-construction and construction, lease termination and space utilization management services that will be components of Project T3, as well as, knowledge of the State Specific Factors and the Near Term Plan (collectively, the "Project T3 Leadership Qualifications"); and

WHEREAS, while the State does not have a resource with the Project T3 Leadership Qualifications on staff, Contractor is a resource with the Project T3 Leadership Qualifications and is uniquely qualified to lead Project T3 (the leadership of Project T3 being hereinafter referred to as "Project T3 Leadership"); and

WHEREAS, the timeline for Project T3 requires that Project T3 be initiated no later than June 1, 2012; and

Comment [WU1]: Concerns were expressed by presenters at the pre agenda meeting that negotiation of any changes requiring contractors signature might cause contractor to want to add additional provisions in the contract that would not be favorable to the State. If the contractor has asked for additional discussion of provisions that were not properly reviewed by the right folks prior to signature, we may have an unhappy contractor working on a high risk project and they may say we did not deal with them fairly. I think it is in the State's best interest to reopen negotiations to allow changes needed and to allow the contractor to argue their case for any changes. How the negotiations and will tie back to how well our lead negotiator deals with the requests.

Comment [WU2]: What is the total funding by source and FY for Project T3? What is the anticipated funding for the entire scope of work?

Comment [WU3]: The State has a contract to provide Management Assistance services, which includes project management expertise. Why did we not utilize this existing contractor to provide the services. Per discussion at pre agenda, the current contractor would have to get these resources from their parent company and they are not readily available. Ask that a letter be provided to file from the current contractor for management assistance that they do not have readily available the resources with the expertise to provide the project management services.

Comment [WU4]: Please provide timeline's for Project T3. What is the significance of June 1st that is requiring initiating no later than this date? Is it the due dates of the facility assessments results and master planning as required in the document. Have the deliverables been provided by JLL?

WHEREAS, it would take approximately six (6) months to (i) complete a competitive procurement process and execute a contract with a vendor to provide Project T3 Leadership, and (ii) allow such vendor the time necessary to gain the knowledge of the State Specific Factors and the Near Term Plan necessary to lead Project T3; and

Comment [WU5]: Not a recommended reason to justify non-competitive amendments. The allocation of time to ensure competition is good public policy.

WHEREAS, execution of the Near Term Plan which forms the roadmap for Project T3 is a logical extension of the "Master Planning" scope of work in the Original Contract; and

Comment [WU6]: Appears to be a reasonable justification due to additional time and added costs to the services being provided, since JLL has the relevant knowledge of the assessments and master plan, since they produced the deliverables.

Pre-Planning of Capital Projects:

Comment [WU7]: Would agree that this would be a logical extension of the scope of work in the original contract. Would request that once the roadmap is provided, that SBC be briefed.

WHEREAS, the State has determined that it is in the best interests of the State to pre-plan all capital projects proposed by State agencies (each a "Proposed Project" and collectively, "Proposed Projects") prior to commencing debate regarding allocating funds to Proposed Projects in the budget process, so that the budget process can be informed by more accurate information as to (i) whether the Proposed Project appears to be in the best interests of the State, from a business case perspective, and (b) the anticipated budget for the Proposed Project; and

Comment [WU8]: This seems to be affirmation of a process that has not be addressed by policy. The process appears to make sense. Pre-planning all projects and process to follow including the provision for funding and approvals should be addressed by SBC Policy.

WHEREAS, such pre-planning would include, but not be limited to the following (the "Pre-Planning Tasks"): (i) meetings with the entity proposing a Proposed Project to determine the needs and ends desired by such entity; (ii) preparation of a market/feasibility study setting forth the business case and possible alternatives to the Proposed Project (a "Market Study"); (iii) oversight of preparation of programming information for the Proposed Project; (iv) oversight of the design portion of the pre-planning for a Proposed Project; (v) defining the complete scope and budget estimate of the Proposed Project; and (vi) oversight of the Proposed Project through State Building Commission approval; and

Comment [WU9]: This appears to be scope that would need to be identified in the Scope of the Contract and not as a whereas provision.

WHEREAS, the Market Study for a significant Proposed Project must be prepared by a person who has (i) prior experience preparing market studies for corporate and governmental users; (ii) access to commercial real estate databases, market research, brokers and other commercial real estate professionals who can provide necessary information; (iii) met with the agency proposing the Proposed Project to determine their needs and ends; and (iv) prepared the programming information for the Project; and

WHEREAS, the State does not have the staff to complete the Pre-Planning Tasks for each Proposed Project; and

WHEREAS, Contractor has experience in providing Pre-Planning Tasks for corporate and governmental users; and

WHEREAS, in order to meet the directive of the General Assembly of the State that all Proposed Projects be pre-planned prior to commencing debate regarding allocating funds to Proposed Projects in the budget process, the pre-planning effort must commence no later than May 30, 2012; and

Comment [WU10]: Where was this directive provided by the General Assembly?

Comment [WU11]: Why does pre-planning have to start no later than May 30, 2012? Is there a timeline from budget for pre-planning that requires pre planning to start by this date?

WHEREAS, it would take approximately three (3) months to complete a competitive procurement process and execute a contract with a vendor to provide the Pre-Planning Tasks; and

Comment [WU12]: Again, not a recommended reason to justify non-competitive amendments. The allocation of time to ensure competition is good public policy.

WHEREAS, providing the Pre-Planning Tasks is a logical extension of the "Master Planning" scope of work in the Original Contract; and

Comment [WU13]: Appears to be a reasonable justification due to additional time and added costs to the services being provided, since JLL has the relevant knowledge of the assessments and master plan, since they produced the deliverables.

WHEREAS, the terms of this First Amendment have been negotiated between the parties in accordance with the policies and procedures of the Department of General Services of the State; and

Comment [WU14]: Need to provide to the State Architect's office the documentation to support the negotiations of this first amendment in accordance with the policy and procedures recommended for approval to the SBC by the Commissioner of General Services.

WHEREAS, State and Contractor have agreed to amend the Original Contract to allow Contractor to provide Project T3 Leadership and the Pre-Planning Tasks, as provided in this First Amendment,

NOW, THEREFORE, for Ten and No/100 Dollars (\$10.00) paid State by Contractor and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Defined Terms. All capitalized terms not expressly defined herein shall have the meaning ascribed thereto in the Original Contract.

2. Recitals. The recitals set forth above are incorporated into this First Amendment as if fully set forth in this section.

3. Scope of Services.

(a) The first (1st) sentence of Section A of the Original Contract is hereby amended by inserting the following immediately prior to the end of said sentence ", the Scope of Project T3 Leadership Services attached hereto as Schedule 1, the Scope of Pre-Planning Tasks attached hereto as Schedule 2, and the scope of any other additional services added to this Contract by amendment. The Scope of Services and Work Plan, the Scope of Project T3 Leadership Services, the Scope of Pre-Planning Tasks, and the scope of any additional services added to this Contract by amendment are hereinafter collectively referred to as the "Contract Services".

(b) The second (2nd) sentence of Section A of the Original Contract is hereby amended by deleting the phrase "Scope of Services and Work Plan" inserting the phrase "Contract Services" in its place and stead.

(c) Section A.1 of the Original Contract is hereby amended by adding the following at the end of said section:

"A.1.d. Additional Contracted Services; including, but not limited to, all additional services added to this Contract by amendment."

4. Maximum Liability. Section C.1 of the Original Contract is hereby amended by:

(a) Deleting the phrase "One Million and NO/100 Dollars" from the first (1st) sentence and inserting the phrase "Four Million Five Hundred Thousand and No/100 Dollars (\$4,500,000.00)" in its place and stead; and

(b) Deleting the phrase "and the Travel Compensation provided in Section C.7" from the second (2nd) sentence.

5. Travel Compensation. Section C.7. of the Original Contract is hereby deleted in its entirety. Notwithstanding anything in the Original Agreement to the contrary, Contractor shall not be entitled to any compensation or reimbursement for expenses for travel, meals, or lodging incurred after June 1, 2012.

6. Communications and Contacts. Section E.2. of the Original Contract is hereby amended by deleting the contact information for the State and inserting the following in its place and stead:

Comment [WU15]: Was not aware that consideration had to be given to an amendment to an existing contract for which consideration is provided in the contract and the amendment.

Comment [WU16]: Not sure this is needed since the order of governance of documents is already covered in the original contract. The original contract governs over any amendments.

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Comment [WU17]: This applies from this point forward throughout the amendment document. For clarity of purpose and intent, an amendment follows a predetermined format that requires restatement of the relevant provisions enumerated in the original contract, by generally deleting the provision in its entirety and replacing with language that includes new language.

"Deputy Director
Department of General Services, STREAM
312 Rosa L. Parks Avenue, 24th Floor
Nashville, TN 37243
(phone) 615-253-2527
(email) Tami.Robison@tn.gov"

7. Hold Harmless. Section E.9. of the Original Contract is hereby amended to delete the last sentence of said section and insert the following in its place and stead:

~~"In no event shall Contractor's liability to State for the services originally authorized under the Original Contract exceed two (2) times the Maximum Liability set forth in the Original Contract (not taking into account any amendments to the Original Contract). In no event shall Contractor's liability to State for the Project T3 Leadership authorized under this First Amendment exceed two (2) times the total compensation paid for Project T3 Leadership, currently anticipated to be \$4,688,000.00. In no event shall Contractor's liability to State for the Pre-Planning Tasks authorized under this First Amendment exceed two (2) times the total compensation paid for the Pre-Planning Tasks, currently anticipated to be \$2,300,000.00."~~

Comment [WU18]: This change would limit the contractor's liability by \$2 Million to a contract whose amendment would increase the maximum liability to \$4.5 Million. This term has been negotiated to lessen the liability to the contractor from the original standard provision that no one else was allowed to negotiate in the original procurement. The competitive nature of the original contract has been compromised with a change to this provision.

8. Additional Services. The Original Contract is hereby amended to add the following as new Section E.16:

Comment [WU19]: This contradicts the next sentence.

"E.16. Additional Authorized Services. As of the date hereof, State hereby authorizes the additional services hereinafter described.

Comment [WU20]: Recommend removing this language at a minimum. The totals do not match two (2) times the maximum liability. The original \$1 million is not set forth in this language.

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E.16.a. Contractor shall provide Project T3 Leadership, which service shall is more particularly described in the scope of services described on Schedule 1 attached hereto. Notwithstanding the terms of Section C.4.a to the contrary, (i) Contractor's compensation for Project T3 Leadership shall be contingent upon the satisfactory completion of the services described in Schedule 1, and (ii) Contractor shall be compensated for Project T3 Leadership based upon the payment rates detailed in Schedule 1-A. As set forth on Schedule 1-A, the total compensation for Project T3 Leadership is anticipated to be \$2,344,000.00, paid in installments of \$146,500.00 per month, in arrears.

Comment [WU21]: All rates and fees should be set forth in Section C of the contract and any amendments. This creates the opportunity for interpretation when you have pricing listed in more than one area.

E.16.b. Contractor shall provide Pre-Planning Tasks, which tasks are more particularly described in the scope of services described on Schedule 2 attached hereto. Notwithstanding the terms of Section C.4.a to the contrary, (i) Contractor's compensation for the Pre-Planning Tasks shall be contingent upon the satisfactory completion of the units, milestones, or increments of service defined in Schedule 2, and (ii) Contractor shall be compensated for the Pre-Planning Tasks based upon the payment rates detailed in Schedule 2-A. As set forth on Schedule 2-A, the total compensation for Pre-Planning Tasks is anticipated to be \$1,150,000.00, paid in installments of \$164,285.71 per month, in arrears."

Comment [WU22]: All rates and fees should be set forth in Section C of the contract and any amendments. This creates the opportunity for interpretation when you have pricing listed in more than one area.

9.8. Effectiveness of Amendment. Pursuant to the terms of Section E.15.b. of the Original Contract, this First Amendment shall not be effective until executed by Contractor, the Commissioner of the Department of General Services and all other State officials and approved by the appropriate State officials, all as required by State laws and regulations. Contractor shall not commence providing any additional services authorized under this First Amendment until this First Amendment has been made effective.

10. Ratification. Except as specifically set forth herein, all other terms, covenants, conditions, representations and warranties set forth in the Original Contract shall remain unmodified and in full force and effect and are hereby ratified and affirmed.

Comment [WU23]: Not sure this is needed since the order of governance of documents is already covered in the original contract. The original contract governs over any amendments.

11. Counterparts. This Amendment may be executed in multiple counterparts, each of which shall be deemed an original hereof. Each of State and Contractor agrees that its signature page may be detached from any one such counterpart and attached to an identical counterpart so that there may be one counterpart with the signatures of both State and Contractor. Facsimile, scanned and electronic signatures shall have the same force and effect as original signatures.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this First Amendment as of the day and date first above written.

Contractor:

IONES LANG LASALLE AMERICAS, INC.

By: 147.kwelz4A




DATE: 5/18/2012

Name: Herman E. Bulls

Title: CEO Public Institutions

State:

STATE OF TENNESSEE

By:  Digitally signed by
Steven G. Cates
Date: 2012.05.18
13:54:13 -05'00'

Steven G. Cates, Commissioner
Department of General Services

DATE: _____

APPROVED: Robert E. Oglesby, State Architect

DATE: _____

APPROVED: Mark A. Emkes, Commissioner
Department of Finance and Administration

DATE: _____

APPROVED: Justin P. Wilson, Comptroller of the Treasury
for compliance with policy and statute

DATE: _____

APPROVED: Robert E. Cooper, Jr., Attorney General
for form and legality

DATE: _____

Comment [WU24]: Recommend that in the future, before an amendment is presented to the SBC for approval that all approvers required for the final version of any contract or amendment have the opportunity to review so as not to unreasonably hold up submission for approval by the SBC or any other approver because of an issue that would keep them from signing the document.

Comment [WU27]: Has the AG's Office reviewed this amendment prior to approval by SBC to ensure there are no problems with form and legality that would cause the amendment to have to be approved again with new changes.

Schedule 1

Scope of Project T3 Leadership Services

- | | | |
|-----|-------------------------|---|
| 1.0 | PROJECT DESCRIPTION: | Implementation of Project T3 — Transforming Tennessee for Tomorrow which includes the design, pre-construction, construction and furnishings for approximately 1.5 Million SF of office space utilizing the new space standards set forth for the State of Tennessee. |
| 2.0 | LOCATION: | Interior construction will occur in multiple buildings within the State of Tennessee. Locations will include Nashville, Knoxville, Chattanooga and Memphis. |
| 3.0 | ESTIMATED PROJECT COST: | The anticipated cost for this project is approximately \$69.5 Million. |

Comment [WU28]: Please identify the funding sources and which FY the funds have been approved or anticipated to be approved in future years?

4.0 ESTIMATED PROJECT SCHEDULE:

The duration for the project is anticipated to be sixteen (16) months beginning June 1, 2012 and concluding on September 30, 2013.

5.0 CLARIFICATIONS & ASSUMPTIONS

It is assumed that Contractor personnel will be provided office space for the staff anticipated to complete this assignment at no cost. Eight (8) employees are anticipated to be engaged during the project and timing of staff involvement will vary based on activities in progress. Office provisions will include phone and data service, printing and office supplies as required. Contractor will provide its own computer hardware and software for employee use.

For work in progress or for planning that is a part of previously approved capital projects, Contractor will provide coordination to ensure the activities associated with those projects are planned and implemented in concert with the activities required for or associated with Project T3. However, day to day management and move coordination services for those capital projects would be provided by state resources. Examples of such projects would include but not be limited to:

1. Core building upgrades, environmental remediation work and build-out of office and meeting space for Commerce & Insurance at the Davy Crockett Building
2. Core building upgrades and build-out of office space at Citizen's plaza

3. Construction and relocations for the departments moving into the Upper Cumberland Regional Facility
4. Structural modifications and repairs to the MAPP Building in Chattanooga, TN
5. Capital improvements to building infrastructure, deferred maintenance of building systems, roof or exterior skin repairs or other capital projects not specifically included in Project T3.

Comment [WU29]: The scope is limited to Project T3. This is beyond scope.

6.0 OVERALL LEADERSHIP AND PROGRAM MANAGEMENT

Contractor shall provide overall leadership and program management of Project T3. Such leadership and program management shall include, but not be limited to, providing the services set forth in the "Phases" listed below.

PHASE I: PROJECT PLANNING

- Confirm project goals in terms of cost, schedule and physical requirements in accordance with the approved Master Plan
- Develop master project schedule in Microsoft Project
- Provide initial cash flow projection in Excel format which will be updated throughout the project
- Provide web based project management tool (OneView) for project documentation and tracking of project budgets and schedules
- Develop budget formats and cost reporting documents
- Assist in the selection process for each Design-Build firm as needed for the total number of projects included in Project T3 including meetings, interviews and review of proposal responses as requested
- Manage the pre-construction process including development of bridging documents, construction documents and the Design Builder's GMP for construction for each project within this program
- Develop Lease Termination Plan
- Prepare for and attend State Building Commission meetings as requested
- Hoteling Plan including budget

Deliverables:

- Master project schedule including move schedule
- Master Project Budget and cost reporting formats
- Project Directory
- Cash flow projection in Excel (initial and updates)
- Lease termination plan
- Hoteling Plan

PHASE II: PRE-CONSTRUCTION

- Review space plans with user, confirm and verify assumptions
- Assist in determining technical requirements
- Manage the finalization of bridging documents

- Tour buildings to familiarize team with existing conditions of the facilities to be included in the program
- Chair kick-off meeting for each project with the design-build team to confirm goals and objectives
- Manage development and finalization of construction documents
- Review detailed tenant improvement estimates prepared by the Design-Builder
- Provide input regarding value engineering or alternate methods and systems proposed by the Design-Builder and provide a summary of potential cost saving options for review and decision
- Coordinate information communication for the entire project team
- Update budget as needed during the pre-construction process as costs are updated and confirmed by the Design-Builder
- Review Design-Builder's proposed GMP and make recommendation for approval upon verification that cost is within budget and scope is agreed upon by State
- Coordinate construction schedule

Deliverables:

- Comments to design documents and budget information submitted by Design-Builder
- Updated cash flow projection with monthly updates
- Updated Project Schedules
- Updated Project Budgets
- Meeting minutes
- Monthly status reports

PHASE III: CONSTRUCTION

- Attend and chair regular project meetings including members of the State's staff, the Design-Builder, furniture vendor, etc.
- Monitor construction progress
- Issue monthly project progress reports
- Review and process contractor and vendor payments for approval by State
- Monitor and control construction costs, issue monthly project anticipated cost reports
- Review request for change in cost and/or time, and negotiate on behalf of State as required. Final approval by State
- Monitor and report schedule status
- Consult as to avoid construction conflicts
- Mediate construction conflicts that do occur
- Help ensure completion of punch list and proper contract close out
- Review and process final payments and lien documentation for approval by State
- Monitor closeout process and procedures

Deliverables:

- Chaired weekly construction meetings and minutes
- Construction oversight
- Design-Builder/vendor invoice review and approval recommendations
- Monthly status reports
- Completed punch list
- Final payment and lien review and approval recommendations

- Conflict resolution

PHASE IV: MOVE MANAGEMENT

- Provide overall leadership for the Move Management effort
- Develop detailed move sequencing schedule for all agencies and departments within the overall program
- Identify and meet with user groups to help them understand move requirements
- Manage all cost associated with move management and reconcile with overall project budget
- Assist in the preparation of requests for proposal for move services
- Assist as requested in the selection process for move services
- Prepare move packages for use by members of Department of General Services (DGS) to communicate with key members of each agency prior to each move
- Coordinate the move sequencing for each departmental move
- Review and approve invoices for move services

Note: It is anticipated that leadership for move management services shall be provided by the Contractor. Agency/departmental communication, on-site representation during the move and follow up with movers regarding damage, clean-up or repairs are anticipated to be led by Contractor with work to be performed by DGS or DGS Subcontract.

Deliverables:

- Overall move sequencing schedule
- Detailed move schedule for each department
- Move coordination packages
- Vendor payment review and recommendations

PHASE V: PROJECT CLOSE-OUT

- Require Design Build firms to provide all materials compatible for incorporation into State's PM system [e.g. Archibus]
- Coordinate the delivery/submission of operation manuals and as-built drawings
- Closeout all financial records associated with each project within the program
- Confirm completion of all punch-list activities
- Coordination of all deliverables as required under designer's manual
- Turnover of all final CAD documents
- Contractor shall verify completeness of the Design-Build Team's as-built information. Accuracy is the responsibility of the Design-Build team

Deliverables:

- O/M manuals & As-Built documents provided by Design-Builder
- Confirmation of punch-list completion
- Reconciliation of final project costs

Schedule 1-A

Compensation for Project T3 Leadership Services

1. Jones Lang LaSalle shall be compensated at the rate of \$146,500.00 per month over the project schedule of 16 months for a total fee of \$2,344,000.00.
2. Should the duration of the engagement be extended beyond the projected completion date, for reasons outside Contractor control, the monthly compensation shall be extended in accordance with the extended schedule.
3. Should the scope of the services provided be adjusted through an increase or decrease of more than 10% as measured by total project cost, a fee adjustment shall be negotiated by the parties in accordance with the policies and procedures of the Department of General Services.

Comment [WU30]: What is the benchmark for making this determination?

Comment [WU31]: If the fee adjustment is intended to be the rate per month, recommend changing the wording to be clear, since the provision of these services is tied to a monthly rate and not a fee.

Schedule 2-A

Scope of Pre-Planning Tasks

Objective

The Department of General Services (DGS) receives requests from various Agencies for capital projects during the budget cycle for the 2013/2014 budget year. The role of DGS at this stage of a project is to: a) assure that the nature and scope of each project has been properly defined, b) assure that the recommended budget is sufficient for the scope of the project, c) identify any risks associated with the project, and d) recommend which projects should be funded based on sound financial principles and management. DGS desires to secure the assistance of a professional services firm which can integrate the following disciplines into the Pre-Planning process: Asset Management, Facility Management, Project Planning and Budgeting, Building Valuation, Real Estate market analysis, and Tenant Representation.

The desired result is a Business Case for each project that accurately defines the project and provides justification for the project moving forward as compared to other potential solutions to stated need. The Business Case shall include, where appropriate, the matters listed under scope of work below, as well as other matters necessary to provide a comprehensive business case justification.

Proposed Solution

The Agency requested projects are numerous and vary in size and complexity greatly. The requested projects include, but are not limited to, capital outlays for new projects as well as capital for maintenance of existing buildings.

Contractor proposes to provide a team of Project Planners whose role will be to 1) accurately ascertain the presented needs of the Agency, 2) identify alternative viable scenarios which solve the stated problem 3) analyze each potential scenario as to cost, benefit, and risk, 4) meet with appropriate Agency or State officials to select the scenario which best meets the state's needs, 5) work with other professional service firms as required to adequately define the scope of each project through a schematic set of documents, 6) create a business case which includes a project objective, complete project scope definition, complete project budget, comparison of alternatives, and economic justification. The Contractor's Project Planners will oversee the planning process, coordinate with the appropriate State employees to identify which requested projects shall be studied, oversee the work of other specialty disciplines and of outside consultants as required, and will perform the financial analysis to create the Business Case.

Scope of Work

Maintenance Projects: The Pre-Planning scope for capital requests for maintenance projects will be as follows:

1. Meet with the appropriate State and Agency personnel to identify and quantify the stated need and intended benefit of the requested project
2. Clarify and Document the need for the requested maintenance project.
3. Consider other potential solutions which might be more cost effective
4. Work with State personnel and contractors to establish a detailed project budget and schedule for the project
5. Review the market to ascertain if other real estate solutions are preferable to investing further in the existing real estate.
6. Prepare a Business Case which summarizes the results and recommends a course of action for each project.

Capital Outlay Projects: The Pre-Planning scope for capital requests for new construction projects will be as follows:

1. Meet with the appropriate State and Agency personnel to identify and quantify the stated need and intended benefit of the requested project
2. Establish a preliminary program including a space allocation summary based on headcount data provided and the existing space standards.
3. Identify potential options or scenarios which meet the stated need. Scenarios to be considered shall include:
 - a. Ownership vs. Leasing
 - b. Self-develop vs. Third Party Developer
 - c. Public Private Partnerships
 - d. Multi-tenant vs. Single-tenant leasing
 - e. Financing Alternatives including financing of leased alternatives
 - f. Geographical market alternatives which might provide favorable labor or operational benefits
 - g. Consolidation with other similar needs
4. Perform Market Analysis of alternatives to establish market values of development, leasing, financing, and disposition of existing assets.
5. Work with State personnel and contractors to establish probable costs for each scenario. Probable costs shall include initial capital investment, on-going costs including operating expenses, and residual values over an appropriate time horizon (normally 10 to 15 years).
6. Provide sensitivity analysis as may be required to weigh the risk of particularly sensitive variables or assumptions.
7. Perform financial analysis on each scenario to establish a Net Present Value for each potential solution
8. Prepare a Business Case summarizing the work above which fairly compares the probable cost and benefit of each scenario identified.
9. Review findings with State and Agency personnel to assist in building consensus for a chosen scenario solution.

For Maintenance and Capital Outlay Projects:

1. Oversight and of the selection of designers who will prepare programmatic and bridging documents.
2. Preparation of detailed estimates for budgetary purposes.

Schedule 2-A

3. Oversight of projects through the State Building Commission approval.

Compensation for Pre-Planning Tasks

The fee for this scope of work for the anticipated projects for the seven months of the 2013/2014 budget cycle shall be \$1,150,000. It shall be paid in monthly installments such that 75% of the fee shall be paid by September 30, 2012 if 75% of the work will be done before September 30, 2012.

Comment [WU32]: Shouldn't this be 2012-2013

Justin Wilson

From: Melinda Parton
Sent: Wednesday, May 23, 2012 9:34 AM
To: Justin Wilson
Subject: Re: JLL Amendment

Will do. Thanks.

From: Justin Wilson
Sent: Wednesday, May 23, 2012 09:05 AM
To: Melinda Parton
Cc: Jason Mumpower; Terry Mason
Subject: RE: JLL Amendment

please start the markup. It is clear to me that this must go before the Building Commission and I am certain everyone wants it to happen at the next meeting. I told Mark Cate this. I also told him to get the documents to Rich.

From: Melinda Parton
Sent: Tuesday, May 22, 2012 3:01 PM
To: Justin Wilson
Cc: Melinda Parton
Subject: FW: JLL Amendment

See Terry Mason's comments below.

I agree that the policy and procedure established by the Commissioner should be approved by the SBC. However, as written, I would not recommend approval. I Have some serious concerns about the lack of any oversight or segregation of duties within the policy as written right now. Leaves too much room for one individual to exercise too much influence in one area.

The services added under this amendment appear to be supplementing state staff to get the priorities approved by the State rolling forward for the Project T3, which could be considered services needed but not anticipated but within the original scope by adding skilled project managers and to help with pre-planning tasks to establish realistic and cost effective approaches to maintenance and capital Outlay projects with definitive scope that should help in tying down costs and any scope creep from designers. DGS currently has a contract for management assistance to be provided. How is the services different under this contract than what could be provided under the existing contract? Also, there are consultant contracts established to provide architectural assistance and other engineering assistance in the area of preplanning that exists. How will these contracts be utilized in conjunction or separately with this contract? We should not have contracts for the same services unless there is a distinction between the services provided or criteria on when one contract would be used over the other contract. Vendors will complain if their contract is being underutilized to the favor of another vendor under a different process for the same services.

The work to be performed under the amendment as provided in the schedules does not appear to interfere with the designer selection process. Schedule 2 sets forth that the planners would work with "other professional service firms as required to adequately define the scope of each project through a schematic set of documents." The pre planners would provide oversight and selection of designers who will prepare programmatic and bridging documents.

I have an overall concern that DGS is trying to accomplish the delegation from the SBC to the Commissioner of General Services through the DGS Policy and Procedure for Contracting Communications and Negotiations to achieve what was not passed through legislation. This policy and procedure would give all procurement solicitation, contract award and

any amendments to such awarded contracts when conducted by DGS to the Commissioner. The policy and procedure excludes Real Property Contracts, which is unclear to me what this excludes. Currently the SBC policy and procedures requires approval of any procurement process and amendments, this appears to attempt leaving the decisions on how to procure and contract and any amendments whether competitive or non competitive strictly at the discretion of the Commissioner of General Services and without the State Architects review or involvement. This can be very dangerous especially with no documented procedures on how these would be handled or documented approved templates.

The amendment itself is not in a form that we would normally receive amendments and some provisions are confusing when sections are mentioned with no references and cost is very confusing and not in one location with the project costs and maximum liability clearly defined. The preplanning services provides that 75% of the costs be paid by September 2012, with services still being provided through September 2013, thus extending the States credit. We should hold on to our funds until services have been provided.

If you are okay, we can mark up the policy and procedure and provide suggestions and point of reference back to SBC policy and procedure to tie in what would need to be approved by the SBC or the State Architect and not just the Commissioner of General Services. We will include language that the CPO's office is using in the similar policy and procedures they are working on for negotiations so that the procurement processes are more consistent where applicable. We can work on getting this done by Friday and sent to other staff members for review.

I would suggest that the amendment itself be reviewed by legal counsel of DGS and submitted to the State Architect's Office for review and clean up by Rich, Attorney hired by Bob Oglesby, to get it in the format it needs to be in for approval.

From: Terry Mason
Sent: Tuesday, May 22, 2012 9:02 AM
To: Melinda Parton; Mary Anne Queen
Subject: JLL Amendment

The JLL original contract was procurement via an SBC RFP process. It would appear that some of Project T3 leadership services and all of the capital project pre-planning services DGS wants to add would fall under the SBC Designer Selection Process. Per SBC/OSA policy, any changes to that selection process would have to be approved by the SBC. The provided DGS Communications & Negotiations in my view would also have to be approved by the SBC in order to apply to an SBC contract. Below are some applicable sections of SBC and OSA policy.

SBC By-Laws, Policy & Procedures

3.04 PRE-PLANNING PROJECTS

Pre-planning projects shall be approved by the Commission for coordination by the State Architect through the Design Development Phase.

3.06 DESIGNER SELECTION

(Authority is delegated to the Office of the State Architect for the designer selection process criteria.)

The overall goal is to secure the most qualified designers for State projects resulting in the development of suitably functioning facilities meeting the user's needs within time and budget limitations in the overall best interest of the State.



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: Mark Cate & Herbert Slatery

FROM: Thad Watkins, Paul Krivacka & Chloc Shafer

RE: Department of General Services ("DGS") Contracting Communications and Negotiations Policy & Procedures (the "DGS Negotiation Policy") and the Proposed First Amendment to Contract (the "JLL Amendment") between the State of Tennessee, Department of General Services and Jones Lang LaSalle Americas, Inc. ("JLL")

DATE: May 23, 2012

- SBC approval of the policies and procedures of DGS and other State agencies and departments is not required.
 - State agencies and departments are permitted to promulgate internal policies and procedures without review, input or approval from any other State body, so long as such policies and procedures do not conflict with the policies and procedures of any other State body with superior authority pursuant to statute or regulation.
 - The DGS Negotiation Policy does not conflict with any existing statute or regulation.
 - The DGS Negotiation Policy does not conflict with the By-Laws, Policy and Procedure (the "SBC By-Laws") of the State Building Commission ("SBC").
 - Nothing in the DGS Negotiation Policy permits or authorizes DGS to bind the State via contract or amendment to an existing contract, where such a contract or amendment would require SBC approval.
 - The JLL Amendment states that the JLL Amendment is not effective until approved by all required State authorities. (See Section 9).
 - No provision of the SBC By-Laws prohibits DGS or any other agency from negotiating an amendment to a contract approved by the SBC; approval of the negotiated amendment would, however, be required.
 - DGS is requesting SBC approval of the JLL Amendment.

REAL ESTATE ASSET MANAGEMENT

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- The DGS Negotiation Policy provides for oversight of the negotiation process and outcome via audits of the documentation required to be produced in connection with any negotiations.
 - “[D]ocumentation of the procurement shall include, at a minimum, the following documents:
 - An analysis of competitive alternatives available and the benefits of pursuing non-competitive negotiation instead of competitive alternatives;
 - A determination that the contract or amendment procured pursuant to non-competitive negotiation results in a contract or amendment for Fair Pricing on terms and conditions most advantageous to the State of Tennessee;
 - A log of the date and times of each meeting with a proposer, including the identity of the proposer and their representative;
 - A description of the nature or reason for all communications with each proposer; and
 - A copy of all written communications, including electronic communications, with each proposer.”

(See Page 2 of the DGS Negotiation Policy)
 - Negotiations for amendments to provide “additional goods and/or services” are only permitted when the additional scope is “(i) within the scope of work set forth in the Original Contract and within the intent and purpose of the Original Contract, or (ii) that is a logical extension of the scope of work in the Original Contract.” (See Page 3 of the DGS Negotiation Policy)
 - DGS must produce evidence that the additional scope to be provided pursuant to an amendment meets one of the above requirements.
 - The Commissioner of DGS must determine that the State’s best interests are served by accepting a Vendor Proposal (as defined in the DGS Negotiation Policy).
 - Specifically, the Commissioner must state in writing, with articulated justification, that
 - “the pricing provided in the Vendor Proposal represents Fair Pricing” and
 - accepting the Vendor Proposal provides “benefits to the State that outweigh the benefits to the State that could be obtained by putting the scope of work out to bid through a competitive bid process”.

(See Pages 3-4 of the DGS Negotiation Policy)
- The DGS Negotiation Policy does not inappropriately concentrate authority in any one individual.
 - Ultimate authority for electing to enter into an agreement or amendment under the DGS Negotiation Policy falls to the Commissioner of DGS.

- Additional DGS employees will necessarily be involved in the negotiations to confirm that the negotiated agreement or amendment complies with the requirements of the DGS Negotiation Policy and provides the goods and/or services that DGS needs.
 - The Commissioner of DGS did not participate in the negotiations with JLL. Negotiations were handled by Tami Robison, Deputy Director of STREAM, with support from Chloe Shafer, STREAM Real Estate Compliance Director, and input from DGS staff with knowledge about the Project T3 needs and industry expertise in contracting for and working with vendors providing services such as those to be provided under the JLL Amendment.
 - Bob Oglesby provided input into the scope of services to be provided under the JLL Amendment and reviewed the proposal received by DGS. Bob did not participate in any negotiations of the JLL Amendment or review any cost information.
 - Paul Krivacka of the CPO provided guidance on negotiations and monitored the negotiators' compliance with the DGS Negotiation Policy.
- The services to be provided by JLL under the JLL Amendment are different from what could be provided under the existing Management Assistance Contract with PB Americas, Inc. ("PB").
 - Because of JLL's involvement in master planning and facility assessments, they were the only vendor capable of providing Project T3 Leadership, the scope of which includes more than is contracted for under the PB contract.
 - PB is aware of JLL's involvement in master planning and facility assessments; anticipated that JLL would be leading the Project T3 effort if outside support was needed to supplement State forces; and indicated that they did not object to JLL providing T3 Leadership services.
 - The PB contract does not include pre-planning services along the lines contemplated by the JLL Amendment.
 - PB does not have the capability of providing the pre-planning services contemplated by the JLL Amendment.
- The existing DGS consultant contracts for architectural and engineering services will be utilized to provide architectural and engineering services, when needed, to complete the pre-planning that DGS intends to do for each capital project proposed by State agencies and departments.
 - None of the existing DGS consultant contracts for architectural and engineering services contain provisions stating that such contracts are exclusive or that the State is obligated to obtain services pursuant to such contracts.
 - JLL will not provide any architectural or engineering services under the JLL Amendment, nor will they directly contract with any architectural or engineering consultants to provide services to the State.
 - The services to be provided by JLL under the JLL Amendment will not interfere with "Designer Selection" under the SBC By-Laws, since JLL will not be directly involved in

any designer selection; JLL will merely utilize designer services provided by the State and provide input into the qualifications designers will need to have in order to consult on pre-planning of projects.

- The DGS Negotiation Policy is not an attempt to accomplish by policy and procedure a delegation of SBC authority that DGS agreed to voluntarily abandon.
 - SBC approval is still required for all procurement solicitations, contract awards and amendments to SBC contracts.
 - The DGS Negotiation Policy in the "Purpose" section defines "Real Property Contracts" as leases, licenses, easements or other contracts or agreements relating to the conveyance or acquisition of an interest in real property. The intent of excluding Real Property Contracts was to exclude agreements over which there was already existing SBC policy.
 - The DGS Negotiation Policy has specific and documented procedures for how negotiated agreements are to be handled per the above.
 - Templates for amendments are impractical since each amendment will be different.
- The JLL Amendment is clearly written.
 - Unlike most contract amendments, the JLL Amendment contains a multitude of "whereas" clauses. The purpose of these "whereas" clauses was to provide the background to support entering into a negotiated amendment rather than seeking a new procurement in the JLL amendment rather than forcing people to refer to additional documentation.
 - The change to the "Maximum Liability" in the JLL Amendment is clearly set forth in Section 4 thereof entitled "Maximum Liability". Payment for services to be rendered under the JLL Amendment is set forth in Section 8 thereof entitled "Additional Services". This presentation of the expenses follows the model in the original JLL contract for setting out the "Maximum Liability" and the costs of services to be provided.
 - The pre-planning services will be most heavily utilized during the period of June, 2012-September 30, 2012. Accordingly, payment is frontloaded to match the level of services to be provided.
- The JLL Amendment has been reviewed by DGS legal counsel and submitted to the Office of the State Architect for review by Bob Oglesby and his legal counsel.
- The DGS Negotiation Policy reflects procurement negotiation best practices among the 50 states. Most state and local governments throughout the United States allow negotiation of contracts and amendments. Only Texas has the comptroller's office involved in the supervision or oversight of the procurement process and this is because the procurement function is performed by the Texas comptroller's office.
 - Each state has different negotiation parameters that are particular to a given state's concerns.

- All of negotiation policies of the various states have four central elements: (1) there exists a process for making a determination that competitive alternatives are unfeasible (under the circumstances); (2) there is a documented determination that the state has done due diligence that it is receiving "fair pricing", "best value" or "fair market value" (all judged under the circumstances) for the goods or services in question; (3) that the negotiation process is transparent (taking into account vendor confidentiality protections under state and federal law); and (4) that there is an audit trail (e.g., the process is documented) documenting the process, e.g., supporting the decision to forego a competitive procurement in favor of direct or non-competitive negotiation, that the government is paying "fair pricing" and so on.
- The DGS Negotiation Policy embodies all four central elements.
- During our research, we could not find a single example of a procuring agency's policy or a trade organization's white paper that mandates segregation of duties in the negotiation process. Quite the contrary, the prevailing view of the policies and white papers surveyed DGS suggest designating a single point of contact or a negotiation team for negotiations is the preferred paradigm. Oversight is unnecessary and concerns over undue influence, etc., are unwarranted because of the transparency of the process and the audit trail required by the Policy.

Phil Williams

From: Herbert Slatery <Herbert.Slatery@tn.gov>
Sent: Friday, June 08, 2012 9:19 AM
To: Melinda Parton
Subject: JLL Contract/State Building Commission/General Services

Categories: Printed

Melinda, thank you for both the comments that you delivered to us at our meeting Wednesday afternoon and the discussion we had on this matter. We appreciate very much the consideration the Comptroller has given to our request for this First Amendment. As we expressed in our meeting, we understand that this request is out of the ordinary and appreciate the patience that the Constitutional Officers, SBC members, and staff have shown in this process.

As we mentioned, the timing of all of this is the driving factor, that and the business case for proceeding with JLL on this basis. Here are some points in response to your comments and some other matters raised in our discussion:

1. JLL is ready to proceed immediately upon SBC approval. If they have a concern with the State, it is not with the contract negotiations. It is with timing. They have had a team dedicated to the T3 and pre-planning projects for a while, but will likely have to re-mobilize them to another project if we miss the June 14 timetable and lose a month or more. They will still perform when the State is ready, but perhaps with different people. This would be a disadvantage to the State.
2. JLL did provide the June 1 deliverables on time and General Services is reviewing them now. There will be some changes to get it in the form of a final report to submit to the SBC. The Comptroller suggested this good idea – have JLL make a full presentation of the Master Plan to the SBC members sometime in July. JLL is prepared to do that, and General Services will work to make that happen when and where the SBC designates.
3. General Services will provide you shortly with the amended Negotiation Policies and Procedures that will address your comments.
4. The backup information on the JLL negotiations is also close to being put together and should be sent to you in the next day or so.
5. Following our conversation Wednesday, we had some further discussions with JLL, advised them that we have received comments to the current form of the Amendment, and informed them that we will have a number of suggested changes to the Agreement that we will address in the Second Amendment, which we will likely move in July. JLL is fine with that approach.
6. PB Americas – we do not think this is a problem; PB Americas, while providing project management, does not offer move management, hoteling and space management services on the scale needed for T3. General Services confirmed a second time that PB Americas agrees the scope is beyond its contract with the State. It is also readily apparent that PB Americas could not perform in accordance with the time schedule we are requesting.
7. Hold Harmless Provision – this provision establishes that two times Maximum Liability is the limitation on JLL's liability. Since this was the formula for the limitation in the Original Contract, we included it for the pre-planning and the T3 project separately. The Maximum Liability is defined as \$4.5 million; two times that figure would be \$9 million. Two times the total compensation payable to JLL under the Amendment and Original Contract would be \$8,988,000. So there is a \$12,000 difference. If necessary, this can be addressed in the Second Amendment.
8. Schedule 1, Sec. 5.5 – this is not intended to increase the scope. General Services will have deferred maintenance projects going on at the same time as T3 projects in buildings such as the Tennessee Tower. JLL will not be the project manager for the deferred maintenance projects. JLL will, however, have to account for these projects in

planning and executing the moves. For instance, the maintenance work on the Tower elevators cannot impede moving TDEC into the Tower on its move date. If elevator service is not at full capacity on the move dates, well, the word “mess” comes to mind. These deferred maintenance projects are the “other capital projects that are not included in T3,” which are referenced in Section 5.5 of Schedule 1.

9. As we indicated to you and the Comptroller, any fee adjustments referred to in Schedule 1-A must be approved by the SBC.
10. Schedule 2-A – the reference to the 2013/2014 budget is correct; the pre-planning is for projects that will be included the budget proposed by the Governor for 2013/2014. The provision stating that 75% of the compensation will be paid by 9/30 tracks the amount of work that will be required to meet the Governor’s budget deadline of 10/1. It is only a 7-month project. So we would be paying about one month early. JLL has indicated that we could just return to the flat monthly fee and address it in the Second Amendment, if the SBC prefers that.
11. T3 Scheduling – as we discussed yesterday, scheduling for the T3 project is fluid, to say the least, and is dependent on a number of factors like lease terminations or amendments, hoteling, furnishings arriving on time, and departments making the moves on a timely basis. General Services can give you some information on scheduling, but we do anticipate that scheduling will be continue to be fluid and there will be a number of adjustments.
12. Architects – Design work for the pre-planning will be done by designers and architects already under contract with the State and approved by the SBC. JLL will offer assistance in this selection, but General Services will decide which designer to use from that list of SBC approved designers.
13. Funding – T3 is a line item appropriation of \$69.5 million in the 2012/2013 budget. If JLL can commence work as requested, General Services anticipates completing the project for the budgeted amount.
14. Most of the other comments are on form and we can resolve them on the Second Amendment.

Our understanding, and our request to all of the SBC members to whom we have spoken, is that we proceed with asking the SBC to proceed with the First Amendment at the June 14th meeting in its current form with the understanding that the Second Amendment will address the form changes and clarifications described above to the extent necessary.

Thank you again for your assistance. Both Mark Cate and I and General Services are available to discuss any of these matters at your request. Herbert

Melinda Parton

From: Melinda Parton
Sent: Thursday, June 14, 2012 8:35 AM
To: Herbert Slatery; Melinda Parton
Cc: Justin Wilson; Jason Mumpower; Joy Harris (Joy.Harris@tn.gov); Jonathan Rummel (Jonathan.Rummel@tn.gov)
Subject: RE: JLL Contract/State Building Commission/General Services

On behalf of the Comptroller, we thank you and appreciate the time last week to meet with us to discuss our comments and concerns regarding the JLL Amendment. Based on the additional feedback provided by you and the Department of General Services staff, we are comfortable in proceeding forward with the amendment as presented.

Also, below in blue are additional comments and questions to your response and matters raised in our discussion and staff discussion as a follow up:

1. JLL is ready to proceed immediately upon SBC approval. If they have a concern with the State, it is not with the contract negotiations. It is with timing. They have had a team dedicated to the T3 and pre-planning projects for a while, but will likely have to re-mobilize them to another project if we miss the June 14 timetable and lose a month or more. They will still perform when the State is ready, but perhaps with different people. This would be a disadvantage to the State. Understood. Thanks.
2. JLL did provide the June 1 deliverables on time and General Services is reviewing them now. There will be some changes to get it in the form of a final report to submit to the SBC. The Comptroller suggested this good idea – have JLL make a full presentation of the Master Plan to the SBC members sometime in July. JLL is prepared to do that, and General Services will work to make that happen when and where the SBC designates. Thanks for the commitment to a full presentation of the Master Plan to the SBC members sometime in July. We would like to request a copy be provided to the SBC members of the deliverable JLL provided General Services prior to the full presentation to be provided in July.
3. General Services will provide you shortly with the amended Negotiation Policies and Procedures that will address your comments. We have not received the amended Negotiation Policies and Procedures. State Treasurer Lillard has questioned whether the scope of the policy is in accordance with SBC statute.
4. The backup information on the JLL negotiations is also close to being put together and should be sent to you in the next day or so. Backup information for the JLL negotiations was provided to our office on Friday afternoon, June 8, 2012.
5. Following our conversation Wednesday, we had some further discussions with JLL, advised them that we have received comments to the current form of the Amendment, and informed them that we will have a number of suggested changes to the Agreement that we will address in the Second Amendment, which we will likely move in July. JLL is fine with that approach. In light of the State Treasurer's question in item #3, there appears to be uncertainty regarding the approval process for a second amendment. We would appreciate collaboration throughout the process.
6. PB Americas – we do not think this is a problem; PB Americas, while providing project management, does not offer move management, hoteling and space management services on the scale needed for T3. General Services confirmed a second time that PB Americas agrees the scope is beyond its contract with the State. It is also readily apparent that PB Americas could not perform in accordance with the time schedule we are requesting. Thanks for documentation that PB Americas can not provide the scope of what is needed for the T3 project.
7. Hold Harmless Provision – this provision establishes that two times Maximum Liability is the limitation on JLL's liability. Since this was the formula for the limitation in the Original Contract, we included it for the pre-planning

and the T3 project separately. The Maximum Liability is defined as \$4.5 million; two times that figure would be \$9 million. Two times the total compensation payable to JLL under the Amendment and Original Contract would be \$8,988,000. So there is a \$12,000 difference. If necessary, this can be addressed in the Second Amendment. Agree. Thanks for the commitment to get this corrected in a second amendment.

8. Schedule 1, Sec. 5.5 – this is not intended to increase the scope. General Services will have deferred maintenance projects going on at the same time as T3 projects in buildings such as the Tennessee Tower. JLL will not be the project manager for the deferred maintenance projects. JLL will, however, have to account for these projects in planning and executing the moves. For instance, the maintenance work on the Tower elevators cannot impede moving TDEC into the Tower on its move date. If elevator service is not at full capacity on the move dates, well, the word “mess” comes to mind. These deferred maintenance projects are the “other capital projects that are not included in T3,” which are referenced in Section 5.5 of Schedule 1. Understood. Thanks.
9. As we indicated to you and the Comptroller, any fee adjustments referred to in Schedule 1-A must be approved by the SBC. Thanks for the confirmation.
10. Schedule 2-A – the reference to the 2013/2014 budget is correct; the pre-planning is for projects that will be included the budget proposed by the Governor for 2013/2014. The provision stating that 75% of the compensation will be paid by 9/30 tracks the amount of work that will be required to meet the Governor’s budget deadline of 10/1. It is only a 7-month project. So we would be paying about one month early. JLL has indicated that we could just return to the flat monthly fee and address it in the Second Amendment, if the SBC prefers that. Understood and flat monthly fee preferred. Thanks for the commitment to address this in a second amendment.
11. T3 Scheduling – as we discussed yesterday, scheduling for the T3 project is fluid, to say the least, and is dependent on a number of factors like lease terminations or amendments, hoteling, furnishings arriving on time, and departments making the moves on a timely basis. General Services can give you some information on scheduling, but we do anticipate that scheduling will be continue to be fluid and there will be a number of adjustments. Understood and appreciate the high level view of the T3 schedule as of 06.07.12.
12. Architects – Design work for the pre-planning will be done by designers and architects already under contract with the State and approved by the SBC. JLL will offer assistance in this selection, but General Services will decide which designer to use from that list of SBC approved designers. To which contract are your referring to that has designers and architects already under contract? Also, what other existing contracts will be utilized to complete the work for the T3 project?
13. Funding – T3 is a line item appropriation of \$69.5 million in the 2012/2013 budget. If JLL can commence work as requested, General Services anticipates completing the project for the budgeted amount. What other alternative procurement methods and contracts are anticipated toward completing the T3 project at the appropriated amount of \$69.5?
14. Most of the other comments are on form and we can resolve them on the Second Amendment. Agree. Thanks for the commitment to resolve the form and clarity items.

Our understanding, and our request to all of the SBC members to whom we have spoken, is that we proceed with asking the SBC to proceed with the First Amendment at the June 14th meeting in its current form with the understanding that the Second Amendment will address the form changes and clarifications described above to the extent necessary. Understood. Thank you for your commitment.

Please let me know if you have any questions.

Again thank you for the time provided to make sure all parties in the approval process are involved and questions and clarifications addressed moving forward.

Please note email address has changed

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

From: Herbert Slatery [mailto:Herbert.Slatery@tn.gov]
Sent: Friday, June 08, 2012 9:19 AM
To: Melinda Parton
Subject: JLL Contract/State Building Commission/General Services

Melinda, thank you for both the comments that you delivered to us at our meeting Wednesday afternoon and the discussion we had on this matter. We appreciate very much the consideration the Comptroller has given to our request for this First Amendment. As we expressed in our meeting, we understand that this request is out of the ordinary and appreciate the patience that the Constitutional Officers, SBC members, and staff have shown in this process.

As we mentioned, the timing of all of this is the driving factor, that and the business case for proceeding with JLL on this basis. Here are some points in response to your comments and some other matters raised in our discussion:

1. JLL is ready to proceed immediately upon SBC approval. If they have a concern with the State, it is not with the contract negotiations. It is with timing. They have had a team dedicated to the T3 and pre-planning projects for a while, but will likely have to re-mobilize them to another project if we miss the June 14 timetable and lose a month or more. They will still perform when the State is ready, but perhaps with different people. This would be a disadvantage to the State.
2. JLL did provide the June 1 deliverables on time and General Services is reviewing them now. There will be some changes to get it in the form of a final report to submit to the SBC. The Comptroller suggested this good idea – have JLL make a full presentation of the Master Plan to the SBC members sometime in July. JLL is prepared to do that, and General Services will work to make that happen when and where the SBC designates.
3. General Services will provide you shortly with the amended Negotiation Policies and Procedures that will address your comments.
4. The backup information on the JLL negotiations is also close to being put together and should be sent to you in the next day or so.
5. Following our conversation Wednesday, we had some further discussions with JLL, advised them that we have received comments to the current form of the Amendment, and informed them that we will have a number of suggested changes to the Agreement that we will address in the Second Amendment, which we will likely move in July. JLL is fine with that approach.
6. PB Americas – we do not think this is a problem; PB Americas, while providing project management, does not offer move management, hoteling and space management services on the scale needed for T3. General Services confirmed a second time that PB Americas agrees the scope is beyond its contract with the State. It is also readily apparent that PB Americas could not perform in accordance with the time schedule we are requesting.
7. Hold Harmless Provision – this provision establishes that two times Maximum Liability is the limitation on JLL's liability. Since this was the formula for the limitation in the Original Contract, we included it for the pre-planning and the T3 project separately. The Maximum Liability is defined as \$4.5 million; two times that figure would be \$9 million. Two times the total compensation payable to JLL under the Amendment and Original Contract would be \$8,988,000. So there is a \$12,000 difference. If necessary, this can be addressed in the Second Amendment.
8. Schedule 1, Sec. 5.5 – this is not intended to increase the scope. General Services will have deferred maintenance projects going on at the same time as T3 projects in buildings such as the Tennessee Tower. JLL will not be the

project manager for the deferred maintenance projects. JLL will, however, have to account for these projects in planning and executing the moves. For instance, the maintenance work on the Tower elevators cannot impede moving TDEC into the Tower on its move date. If elevator service is not at full capacity on the move dates, well, the word "mess" comes to mind. These deferred maintenance projects are the "other capital projects that are not included in T3," which are referenced in Section 5.5 of Schedule I.

9. As we indicated to you and the Comptroller, any fee adjustments referred to in Schedule I-A must be approved by the SBC.
10. Schedule 2-A -- the reference to the 2013/2014 budget is correct; the pre-planning is for projects that will be included the budget proposed by the Governor for 2013/2014. The provision stating that 75% of the compensation will be paid by 9/30 tracks the amount of work that will be required to meet the Governor's budget deadline of 10/1. It is only a 7-month project. So we would be paying about one month early. JLL has indicated that we could just return to the flat monthly fee and address it in the Second Amendment, if the SBC prefers that.
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14. Most of the other comments are on form and we can resolve them on the Second Amendment.

Our understanding, and our request to all of the SBC members to whom we have spoken, is that we proceed with asking the SBC to proceed with the First Amendment at the June 14th meeting in its current form with the understanding that the Second Amendment will address the form changes and clarifications described above to the extent necessary.

Thank you again for your assistance. Both Mark Cate and I and General Services are available to discuss any of these matters at your request. Herbert

Melinda Parton

From: Melinda Parton
Sent: Tuesday, July 24, 2012 12:39 PM
To: Justin Wilson (Justin.Wilson@cot.tn.gov)
Cc: Jason Mumpower (Jason.Mumpower@cot.tn.gov)
Subject: Notice of Advertisement - Concern
Attachments: image2012-07-24-122107.pdf

See attached two notices of advertisement for space. These notices have occupancy beginning prior to the execution of a lease document and payment to JLL of a commission fee for part to be paid upon execution of a lease and the other part after occupancy of tenants in the lease space. Not sure there is any authority to do this and this just does not appear to be appropriate.

Terry has a call in to Chloe to ask her what authority exists for JLL to charge a commission fee with an entity that is providing leased space to the State and authority to occupy space prior to the start date of a lease.

Melinda

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

2012 JUL 23 AM 8:53

BILL HASLAM
GOVERNOR

MAKATEL L. EMMIS

MEMORANDUM

TO: State Building Commission Members

FROM: Ron Colter, Director
Real Estate Asset Management

SUBJECT: Current Need for Leased Space
Agency: Dept. of General Services
County: Davidson
Proposal No. 1206907-GS19

DATE: July 17, 2012

Pursuant to T.C.A. 12-2-114, the Office of Real Estate Asset Management, Department of General Services, will be advertising for lease space in Nashville, Tennessee. The enclosed notice provides information concerning our current needs and is provided for your information.

Should you have any questions, please do not hesitate to contact Jonathan C. McCord, Senior Associate Broker, Jones Lang LaSalle Americas, Inc., at 741-7781.

Enclosure

cc: Tami Robison, Deputy Commissioner
Steve Berry, Assistant Commissioner

ADVERTISEMENT

NO. 1206907-GS19

THE STATE OF TENNESSEE DESIRES TO LEASE SPACE IN DAVIDSON COUNTY

LOCATION: Within Davidson County, Tennessee and within the following boundaries: bounded on the North by James Robertson Parkway to Charlotte Avenue, bounded on the South by Demonbreun Street, bounded on the East by the Cumberland River and bounded on the West by I-65.

AMOUNT: Approximately 120,000 to 130,000 rentable square feet of office and related space in total. The State intends to award a minimum of 60,000 square feet initially with the capability of expanding into the balance of the target square footage at a later time in increments of no less than 30,000 rentable square feet. The additional increments of 30,000 square feet may be contiguous or non-contiguous with the initial 60,000 square feet however the State prefers to receive contiguous space. A minimum of 2 free paved parking spaces per 1,000 rentable square feet shall be provided for the initial square footage and any expansion space.

TERM: October 1, 2012 to September 30, 2013 (One (1) Year) with month to month holdover capabilities
Space must be made available to prepare for occupancy on September 1, 2012

COMMISSION: Lessor to pay four percent (4%) of the total gross rent to be paid to Jones Lang LaSalle Americas, Inc. Two percent (2%) to be paid upon execution of lease document and two percent (2%) paid at time of scheduled occupancy date.

**PROPOSAL
OPENING:** Proposals will be opened on **August 8, 2012 at 2:00 PM**, Central Time in the **Conference Center North, The Robertson Room**. Representatives of Jones Lang LaSalle Americas, Inc. and Real Estate Asset Management will evaluate conforming proposals after the opening.

**OWNERS
& AGENTS:** Proposals received by Real Estate Asset Management after the proposal opening date and time will not be considered. If you desire to submit a proposal for consideration, please contact this office for specific proposal information by **August 1, 2012**.

You may also preview specific requirements at: <http://www.tn.gov/generalserv/psm/rpa/leaseProposal.shtml>
by clicking on "Request for Lease Proposals" and referencing the proposal number above.

CONTACT: Jonathan C McCord
Senior Associate Broker
Jones Lang LaSalle Americas, Inc.
3344 Peachtree Rd NE, Suite 1900
Atlanta, Georgia 30326
Phone: Nashville Office: (615) 741-7781
Atlanta Office: (404) 995-6510
Mobile: (770) 364-1668
jonathan.mccord@am.jll.com

Phil Williams

From: Melinda Parton
Sent: Wednesday, July 25, 2012 7:54 AM
To: Terry Mason
Subject: FW: Notice of Advertisement - Concern

FYI.

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

From: Justin Wilson
Sent: Tuesday, July 24, 2012 4:14 PM
To: Melinda Parton
Subject: RE: Notice of Advertisement - Concern

A commission to JLL at first blush seems very wrong. Let's see what Chloe says and then figure out what to do. I am suspicious to say the least.

From: Melinda Parton
Sent: Tuesday, July 24, 2012 12:39 PM
To: Justin Wilson
Cc: Jason Mumpower
Subject: Notice of Advertisement - Concern

See attached two notices of advertisement for space. These notices have occupancy beginning prior to the execution of a lease document and payment to JLL of a commission fee for part to be paid upon execution of a lease and the other part after occupancy of tenants in the lease space. Not sure there is any authority to do this and this just does not appear to be appropriate.

Terry has a call in to Chloe to ask her what authority exists for JLL to charge a commission fee with an entity that is providing leased space to the State and authority to occupy space prior to the start date of a lease.

Melinda

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

Language in recent STREAM Request for Lease Proposals

COMMISSION: Lessor to pay four percent (4%) of the total gross rent to be paid to Jones Lang LaSalle Americas, Inc. Two percent (2%) to be paid upon execution of lease document and two percent (2%) due at time of scheduled occupancy date.

Comptroller Staff concern/issue:

What authority does JLL have to charge the commission?

JLL proposed a rate of \$0.00 for C.3. Space Lease services in its RFP cost proposal and the JLL contract payment rate for C.3. services is \$0.00. The JLL contract does not authorize JLL to charge state lessors a commission as compensation for performing said services to the State. Any such compensation should have been contemplated in the RFP procurement and addressed in the resulting contract as a no-cost component to the State. No authorization exists in statute, rule or SBC policy for DGS or a contractor acting on its behalf to charge a State lessor.

Note: The contract scope for C.3. Space Lease services is as follows:

C.3. Space Leases

Renegotiate lease terms in remaining properties to extent possible and prioritize for the greatest savings to the State/Client and negotiate lease terms to meet future space needs of the State to obtain the best lease terms possible to the State.

COT staff recollection of phone call with STREAM legal counsel

"Early last week (week of July 29th) I had a phone conversation with DGS's Chloe Shafer regarding our need for DGS Legal opinion as to the authority JLL has to charge the commission. Ms. Shafer implied that everyone in our February meeting (2/24 at 9:00) knew that JLL was going to make their money charging such a commission. I responded that we knew that is what they (DGS & JLL) wanted to do but we thought they understood from the meeting that JLL could only be paid via the service rates proposed in their cost proposal. After some discussion, it was agreed that Chloe and I would "agree to disagree" on our understandings from the 2/24 meeting. Ms. Shafer agreed that there was no statute, rule or policy that authorized the commission nor did the contract authorize it. It was her understanding that since the Lessor and not the State was paying JLL the commission that it was OK. I informed her that the services being provided fell under the JLL contract with the State and if the intent was for them to receive such compensation for said services that it should have been included in the contract as a no-cost component to the State."

Phil Williams

From: Melinda Parton
Sent: Friday, August 10, 2012 3:49 PM
To: Justin Wilson; david.lillard@tn.gov
Cc: Joy Harris (Joy.Harris@tn.gov); Jonathan Rummel (Jonathan.Rummel@tn.gov); Jason Mumpower
Subject: FW: Lease Ads 1206907-GS19 and 1206921-GS19

We asked Steve Barry, Assistant Commissioner for Real Estate Asset Management, what the status was for the lease advertised for office space that included a commission and discovered there were actually two leases advertised. The other one was for warehouse space in Nashville. They will not be moving forward with either of the advertised leases due to the explanation provided by Steve Barry below.

They will be negotiating the office space lease with downtown entities on the basis that an emergency exists to have the space and will not include the commissioning as part of the negotiations. Also, they will readvertise for the warehouse space without commissioning included.

Wanted to make sure you all were brought up to date on the status.

Thanks,

****Please note email address has changed****

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
melinda.parton@cot.tn.gov
[REDACTED]

From: Steve Berry [<mailto:Steve.Berry@tn.gov>]
Sent: Friday, August 10, 2012 2:36 PM
To: Terry Mason
Cc: Melinda Parton; Herbert Slatery; Tami Robison; Heather Iverson
Subject: RE: Lease Ads 1206907-GS19 and 1206921-GS19

Terry- As we discussed earlier, STREAM received no responses to the office hoteling advertisement due primarily to the special nature of requirements (open landscaping with few hard walled offices), strengthening of the downtown office submarket and short duration of lease term. As a consequence, STREAM will seek an emergency lease given the time constraints and the special requirements mentioned above for targeted space. STREAM will be negotiating direct and, as such, there will be no commission payable by Lessor. We expect to bring this forward for approval in September. The second procurement for warehouse space was cancelled due to the inclusion of the commission in the advertisement. It is STREAM's intention to either re-advertise or again seek an emergency lease. STREAM will negotiate direct and there will be no commission payable by Lessor for this procurement.

Steve Berry, Assistant Commissioner | Real Estate Asset Management
Department of General Services | State of Tennessee
312 Rosa L Parks Avenue | 24th Floor, TN Tower | Nashville, TN 37243
Office: [REDACTED]
steve.berry@tn.gov

From: Terry Mason [<mailto:Terry.Mason@cot.tn.gov>]
Sent: Friday, August 10, 2012 1:58 PM
To: Steve Berry
Cc: Melinda Parton
Subject: Lease Ads 1206907-GS19 and 1206921-GS19

Hi Steve,

Please provide an update on the status of two lease procurements referenced above in regards to the number of proposals received and how STREAM intends to proceed with the procurements as well as the commission charge to the lessor.

It is our expectation that if STREAM intends to proceed with the commission in these or future lease procurements that STREAM provide to Staff-Sub members the agency's legal opinion as to the authority DGS/JLL has to charge lessors a commission.

Thanks, Terry

Terry Mason, CGFM
Contract Review Administrator
Comptroller Procurement Oversight
terry.mason@cot.tn.gov
[REDACTED]

AMENDMENT NUMBER TWO
TO CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
JONES LANG LASALLE AMERICAS, LLC
SBC Project No. 460/000-01-2011

This Amendment Number Two (this "Second Amendment") is made and entered by and between the State of Tennessee, Department of General Services, hereinafter referred to as the "State," and Jones Lang LaSalle Americas, LLC, hereinafter referred to as the "Contractor." It is mutually understood and agreed by and between said undersigned contracting parties that the subject contract is hereby amended as follows:

1. Lease Commissions.

A. The Contract is hereby amended to add the following as new Section C.14.:

"C.14. Lease Commissions. In connection with the services provided by Contractor pursuant to the Space Leases component of Master Planning (Section C.3 of Contract Attachment A), Contractor shall have the right to collect lease commissions from landlords entering into leases with the State; provided no such lease commission shall exceed four percent (4%) of the total rents paid to or received by such landlord under the applicable lease. Contractor shall not seek any compensation from the State in connection with the services provided pursuant to the Space Leases component of Master Planning. If a landlord or other necessary third party refuses to execute a lease commission agreement with Contractor or to pay the lease commission due, the State has no authority or obligation to compel the execution of such agreements or payment of such lease commission; provided, however, the State shall support shall not oppose Contractor's right to receive lease commissions permissible under this Contract. All sources of lease commissions and the amounts of any lease commissions received by Contractor in accordance with this Contract shall be disclosed in writing to State. A portion percentage of any lease commission collected by Contractor pursuant to this Contract shall be remitted to the State as a "rebate" in accordance with Schedule C.14, attached hereto."

Comment [MKP1]: This needs to be reworded to make it clear what amount the 4% would apply. Since C.3 of Attachment A, provides for a commission associated with current leases to renegotiate lease terms to obtain the best pricing. Currently states, "of the total rents paid to or received by such landlord under the applicable lease." Is the intent to apply the percentage to the total rent paid to date to the landlord or the total amount after the lease term renegotiation that would be paid to the landlord for the new term?

B. The Contract is hereby amended to add the following two (2) sentences at the end of Section C.3 of Contract Attachment A, such that Section C.3. of Contract Attachment A shall now read as follows:

"C.3. Space Leases

Renegotiate lease terms in remaining properties to extent possible and prioritize for the greatest savings to the State/Client and negotiate lease terms to meet future needs of the State to obtain the best lease terms possible for the State. Any leases renegotiated or negotiated in accordance with this section shall be handled in compliance with all applicable laws and policies, including, without limitation, any advertising requirements. Furthermore, if an advertisement is required for a lease to be renegotiated or negotiated under this section, such advertisement shall include language stating that (i) Contractor may collect a lease commission in an amount not to exceed four percent (4%) of the total rents paid to or received by such landlord under the applicable lease, and (ii) the lease terms shall be negotiable."

2. Required Approvals. The State is not bound by this Second Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but

are not limited to, the Office of the State Architect, the Commissioner of General Services, the Comptroller of the Treasury, and the Attorney General).

3. Amendment Effective Date. The revisions set forth herein shall be effective as of the date this Second Amendment is fully executed. All other terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

The remainder of this page left intentionally blank.

Comment [MKP2]: Standard term and condition D.2 provides "The contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by the Tennessee laws and regulations."

The original contract included the Commissioner of Finance and Administration. Is there any reason why he should not be listed in the parenthesis as a contract party?

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all the parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures. This Second Amendment is entered into as of the day and year last written below:

IN WITNESS WHEREOF,

JONES LANG LASALLE AMERICAS, LLC:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE

DEPARTMENT OF GENERAL SERVICES:

Steven G. Cates, Commissioner

DATE: _____

DEPARTMENT OF FINANCE AND ADMINISTRATION:

Robert E. Oglesby, State Architect

DATE: _____

APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE

Justin P. Wilson, Comptroller of the Treasury

DATE: _____

APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:

Robert E. Cooper, Jr.
Attorney General and Reporter

DATE: _____

Schedule C.14.

Lease Commission Rebate Schedule

Total Commission Received by Contractor	Percentage of Total Commission Received by Contractor-Rebated to be remitted to State
\$0-\$50,000	0%
\$50,001-\$250,000	10%
\$250,001-\$500,000	15%
Over \$500,001	20%

AMENDMENT NUMBER TWO
TO CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF GENERAL SERVICES
AND
JONES LANG LASALLE AMERICAS, LLC
SBC Project No. 460/000-01-2011

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Comment [MKP1]: Not sure even my suggested language would cover those leases with term extensions. We need to tie down the amount that the 4% would be applied at a snapshot picture in time. What is the intent of what is to be accomplished with the negotiations to help us better understand what language to put into this amendment? Can we limit the % to the current rental * the current initial term of the existing contract. From a risk stand point, I would like to see the list of leases their rental rate and initial term to see what the potential costs to landlords applying the 4%. We may need to schedule a conference call late this afternoon to discuss further.

B. The Contract is hereby amended to add the following two (2) sentences at the end of Section C.3 of Contract Attachment A, such that Section C.3. of Contract Attachment A shall now read as follows:

"C.3. Space Leases

Renegotiate lease terms in remaining properties to extent possible and prioritize for the greatest savings to the State/Client and negotiate lease terms to meet future needs of the State to obtain the best lease terms possible for the State. Any leases renegotiated or negotiated in accordance with this section shall be handled in compliance with all applicable laws and policies, including, without limitation, any advertising requirements. Furthermore, if an advertisement is required for a lease to be renegotiated or negotiated under this section, such advertisement shall include language stating that (i) Contractor may collect a lease commission, ~~in an amount not to exceed four percent (4%) of the total rents paid to or received by such landlord under the applicable lease,~~ and (ii) the ~~lease terms shall be negotiable."~~

Comment [MKP2]: Changed this to add back the language to require the advertisement include that the contractor may collect a lease commission.

2. Required Approvals. The State is not bound by this Second Amendment until it is signed by the contract parties and approved by appropriate officials in accordance with applicable Tennessee laws and regulations (depending upon the specifics of this contract, said officials may include, but

are not limited to, the Office of the State Architect, the Commissioner of Finance and Administration, the Commissioner of General Services, the Comptroller of the Treasury, and the Attorney General).

3. Amendment Effective Date. The revisions set forth herein shall be effective as of the date this Second Amendment is fully executed. All other terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

The remainder of this page left intentionally blank.

This instrument may be executed in one or more counterparts. It shall be fully executed when each party whose signature is required has signed at least one (1) counterpart, even though no one (1) counterpart contains the signatures of all the parties to this instrument. Electronic, scanned or facsimile signatures shall have the same force and effect as original signatures. This Second Amendment is entered into as of the day and year last written below:

IN WITNESS WHEREOF,

JONES LANG LASALLE AMERICAS, LLC:

SIGNATURE

DATE

PRINTED NAME AND TITLE OF SIGNATORY (above)

STATE OF TENNESSEE

Formatted: Indent: Left: -0.08"

DEPARTMENT OF GENERAL SERVICES:

Steven G. Cates, Commissioner

DATE: _____

DEPARTMENT OF FINANCE AND ADMINISTRATION:

Mark A. Emkes, Commissioner

DATE: _____

Robert E. Oglesby, State Architect

DATE: _____

APPROVED AS TO COMPLIANCE WITH POLICY AND STATUTE

Justin P. Wilson, Comptroller of the Treasury

DATE: _____

APPROVED AS TO COMPLIANCE WITH FORM AND LEGALITY:

Robert E. Cooper, Jr.
Attorney General and Reporter

DATE: _____

Schedule C.14.

Lease Commission Rebate Schedule

Total Commission Received by Contractor	Percentage of Total Commission Received by Contractor Rebated to be Remitted to State
\$0-\$50,000	0%
\$50,001-\$250,000	10%
\$250,001-\$500,000	15%
Over \$500,001	20%



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: The Honorable Justin P. Wilson, Comptroller
State of Tennessee

FROM: Steven G. Cates, Commissioner
Department of General Services

DATE: September 18, 2012

RE: Talking Points

Enclosed please find a document from STREAM with detailed talking points that will be helpful for our scheduled meeting on Wednesday, September 19th.

Meeting at 10:00 Am

COMMISSIONER'S OFFICE

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STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: Steven G. Cates, Commissioner
Department of General Services

FROM: STREAM
Department of General Services

DATE: September 18, 2012

RE: Talking Points

I. CURRENT STATUS OF STATE PROPERTIES.

- Budget Decisions - Deferred Maintenance.
 - Aging real estate assets.
 - Lack of capital funding over several decades.
 - Deferred maintenance.
 - Inadequate preventative maintenance program.
 - Inadequate technology.
 - Inadequate human capital to develop an in-house solution to facility maintenance and management.
- Recent Real Estate Failures:
 - Andrew Jackson Building (case study attached);
 - TRA Building;
 - Tennessee Tower Elevator.

II. DISCUSSION OF FACILITY MAINTENANCE AND MANAGEMENT.

- 60% of the cost of facility maintenance and management is already contained in the JLL Contract, which was competitively awarded; 40% remains to be negotiated with JLL and subject to a subsequent amendment; the State has not authorized JLL to proceed with facility maintenance or management.
- Current contract contains pricing anomalies (e.g., pricing by line item rather than a holistic management approach) that neither party desires.

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- SBC conditioned approval of First Amendment on deleting facility management services from JLL contract; absent agreement, legal issue as to state's right to unilaterally terminate a portion of the contract without terminating the whole contract.
- Second Amendment versus re-procurement of facility management services.

III. DISCUSSION OF SECOND AMENDMENT TO JLL CONTRACT.

- Opportunity to correct pricing anomalies and adopt more holistic pricing model, e.g., to include labor management services.
- Opportunity to clean up ambiguous terms and conditions.
- Opportunity to deal with facility maintenance and management issues.
- Opportunity to deal with pass through cost issues.

IV. LEASE NEGOTIATIONS AND COMMISSIONS.

- Should be dealt with in Second Amendment.



STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY

Justin P. Wilson
Comptroller

OFFICE OF MANAGEMENT SERVICES

James K. Polk State Office Building
505 Deaderick Street, Suite 1400
Nashville, Tennessee 37243-1402
Phone (615) 401-7720

Melinda K. Parton
Director of Management
Services

April 19, 2013

MEMORANDUM

TO: Chloe Shafer, Real Estate Compliance Director
Department of General Services

Melinda Parton

FROM: Melinda Parton, Director of Management Services

SUBJECT: Amendment #5 to Jones Lang Lasalle Contract for Capital Improvements Master Plan

We received amendment #5 to the Jones Lang Lasalle Contract for Capital Improvements Master Plan on Monday, April 15th. After completing our review, we have the recommendations and questions in red to the provisions in the amendment, prior to further consideration of the amendment for approval:

A. Scope of Services :

"A. SCOPE OF SERVICES:

The scope of services is more particularly described in the Scope of Services and Work Plan attached hereto as Contract Attachment A (there is no attachment A to this amendment or is the reference to Attachment A to the original contract? Is so, please state what attachment is pertains to here), the Scope of Project T3 Leadership Services attached as Schedule 1 the First Amendment to Contract and Exhibit A to the Fifth Amendment to Contract (both Schedule 1 and Exhibit A have different project descriptions and locations), and the Scope of Pre-Planning Tasks attached hereto as Schedule 2 (there is no schedule 2 to this amendment, there is an Attachment A, schedule 2 to the original contract.. what is the correct reference?). The Scope of Services and Work Plan, the Scope of Project T3 Leadership Services, and the Scope of Pre-Planning Tasks are hereinafter collectively referred to as the "Contract Services". The Contractor agrees to perform the services in accordance with the Request for Proposals, the Contract Services, and the Contractor's Proposal dated November 9, 2011 all of which are made a part of this Contract and are incorporated herein by reference."

The scope of Services needs clarity as to whether the original or which amendment attachments, exhibits and schedules are being referenced.

E.16.a. Authorized Services:

"E.16.a. Contractor shall provide Project T3 Leadership, which service is more particularly described in the scope of services described on Schedule 1 attached to the First Amendment and on Exhibit A attached hereto. Notwithstanding the terms of Section C.4.a (This

provision in the original contract provides that the Contractor's compensation is contingent on completion of service in Attachment A and paid based on Attachment B. Schedule B provides for B.1. facility condition overview survey and B.2. facility assessments at \$.05 per sq. ft. to facilities listed in Contract Attachment A, Schedule 1. Schedule B further provides for C.1, C.2, C.4 and C.6 for Master Planning at \$.095 sq. ft. to facilities listed in Attachment A, schedule 1. What specific facilities comprise the Office Modernization Leadership Services for which the payment rate square footage would apply?) to the contrary, (i) Contractor's compensation for Project T3 Leadership shall be contingent upon the satisfactory completion of the services described in Schedule 1 (Which schedule 1 is being referenced? Attachment A, Schedule 1 or the Schedule 1 to Amendment #1?) and Exhibit A, as applicable, and (ii) Contractor shall be compensated for Project T3 Leadership based upon the payment rates detailed in Schedule 1-A-1 attached hereto, as applicable. (Compensation methods, rates and schedules should be addressed within section C of the contract for clarity of understanding how compensation is provided to contractor and not as part of additional services. There should be one compensation schedule referenced in Section C. Request all compensation schedules from the original to this fifth amendment be referenced in one schedule that replaces all previous schedules.)

The "Scope of Office Modernization Leadership Services" listed in Exhibit A to the this amendment and the "Scope of Project T3 Leadership Services" listed in Schedule 1 to Amendment #1, have different project descriptions and locations. The project description for Schedule #1 to the first amendment provides:

"Project Description: Transforming Tennessee for Tomorrow which includes the design, pre-construction, construction and furnishings for approximately 1.5 million SF of office space utilizing the new space standards set forth for the State of Tennessee. Location: Interior construction will occur in multiple buildings within the State of Tennessee. Locations will include Nashville, Knoxville, Chattanooga and Memphis."

The "Scope of Office Modernization Leadership Services" listed in Exhibit A provides:

"Project Description: Project Leadership for the modernization of State office spaces (What particular office spaces are being referenced that are different from Project T3?) which may include the oversight, leadership and coordination of: facility assessments, master planning, programming, space planning, project design, project planning, leasing support, move management, construction efforts, inter-project coordination, and related tasks. The modernization of State office spaces could be accomplished by hotelling employees while existing space is modernized or by moving employees into leased space or other available State space. (No locations provided).

Based on the above project description for the "Office Modernization Leadership Services" the contractor will be paid for the following:

- Leadership Services described in 2.1 through 2.4 of Exhibit A to this amendment of \$146,500 a month up to 16 months. Total possible amount \$2,344,000.
- Facility Assessments for _____ facilities at a cost of \$.05 per Sq. Ft. or _____ sq. ft. for _____ facilities. (Missing the facilities and square footage per facility. Maximum cost not known due to missing factor.)
- Master Plan for _____ facilities at a cost of \$.095 per Sq. Ft. or _____ sq. ft. for _____ facilities (Missing the facilities and square footage per facility. Maximum cost not known due to missing factor.)
- Pre-Planning Services at a monthly cost of \$164,285.71 for _____ months (Missing how many months pre-planning services would be needed)

Please provide the missing information that will be used to determine the maximum costs of services to be provided by this amendment.

6. Amendment Effective Date

"Amendment Effective Date. The revisions set forth herein shall be effective as of the date this ~~Fourth~~ Fifth Amendment is fully executed. All other terms and conditions of the Contract not expressly amended herein shall remain in full force and effect.

Schedule 1-A-1 provides:

Compensation for Project T3 Leadership Services

Compensation for Original T3 Leadership Services (services described on Schedule 1 to the First Amendment):

1. Jones Lang LaSalle shall be compensated at the rate of \$146,500.00 per month over the anticipated project schedule of 16 months for a total fee of \$2,344,000.00. (This ties back to amendment #1 which expanded scope to include leadership services as defined to that amendment at a cost per month of \$146,500)
2. Should the duration of the engagement be extended beyond the projected completion date, for reasons not due to Contractor's failure to perform pursuant to the terms of the First Amendment, the monthly compensation of \$146,500.00 shall be extended in accordance with the extended schedule [of the projects identified from the facility master plan and facility assessments and made a part of the this contract through an amendment to the contract.] (Suggest adding the language in between brackets to this section. This will allow for the scope to include projects identified from the master plan and assessments which are unknown right now, but they must be specifically identified along with the funding in an amendment to the contract.)
3. Should the scope of the services provided be adjusted through an increase or decrease of more than 10% as measured by total project cost, a fee adjustment shall be negotiated by the parties in accordance with the policies and procedures of the Department of General Services. (Request removal of this provision, as there is no way to identify adjustments since there are no projects or project costs identified to date. Projects identified should be added to the scope of this contract through a formal amendment. Please provide our office with a copy of the negotiations policy and procedure of the Department of General Services that is envisioned to be used to negotiate adjustments. A process used in a procurement or contracting process under the authority of the SBC would require approval by the governing body.)

Compensation for Office Modernization Leadership Services (services described on Exhibit A attached to this Fifth Amendment):

Contractor shall be compensated as follows: Recommend deleting all language below except where noted. The inclusion of a payment methodology for something unknown is premature, since there are no projects identified. Suggest this be removed for expediency of executing the provisions for master planning and facility assessments and bring back list of projects as an additional amendment to the contract once they are determined. There is not enough funds added to this contract at this point to complete all the services provided for in this amendment and for the unknown projects, therefore, there would have to be an additional amendment to the contract to add funding.

- a. at a rate of 3.37% of the Total Project Cost (How was this rate determined and on what basis was this determined to be reasonable on what basis, since this was not a rate set forth in the original procurement or any previous amendment?) for providing Office Modernization Leadership

Services. (As used herein, "Total Project Cost" shall mean the total amount paid by the State to all other service providers and material providers in connection with the project for which Office Modernization Leadership Services are provided pursuant to an approved task order (This should be pursuant "Project Scope and Source of Funding and MACC as approved by the SBC?"), but excluding any amounts paid for associated projects or subprojects ancillary to the office modernization project (each an "Ancillary Subproject")); or

b. at a rate of 1% of the total amount paid by the State to all other service providers and material providers for an Ancillary Subproject (How was this rate determined and on what basis was this determined to be reasonable on what basis, since this was not a rate set forth in the original procurement or any previous amendment?) for providing only the limited oversight and coordination services of the following "Responsibilities" under the Office Modernization Leadership Services: 2.5.1, 2.5.2, 2.5.3, and 2.5.5.

Contractor shall propose and the Parties shall agree on a "Schedule of Values" to be attached to each task order not later than the date of its execution which shall include (i) estimated Total Project Cost for the project or Ancillary Subproject covered by that task order, and (ii) the portion of the resulting Contractor fee applicable to each of the "Responsibilities" under the Office Modernization Leadership Services applicable to such task order. Said Schedule of Values shall be updated, at a minimum, at the completion of each phase of the project, and there shall be a reconciliation of the fees due in connection with each update; provided, however, there shall be no (i) reduction in the amount of fees for work already performed if the Total Project Cost or cost of an Ancillary Subproject is reduced as a result of the State reducing the scope of a project and (ii) increase in the amount of fees for work already performed if the Total Project cost or cost of an Ancillary Subproject is increased as a result of the State increasing the scope of a project.

The parties shall monitor the total amount of Contractor's fees calculated as above for task orders issued, and changes thereto as the various estimated Total Project Costs are reconciled to actual Total Project Costs. The State will not issue task orders for work whose fees computed as above cause Contractor's total contract fee to exceed the Maximum Liability in section C.1.

Notwithstanding anything herein to the contrary, Contractor shall not charge any fee in connection with "Leadership of Facility Assessments," "Leadership of Master Planning", or "Leadership of Pre-planning Services," as Contractor shall be fully compensated for the aforementioned responsibilities in the unit cost that shall be paid for those services as set forth in the Contract. (Recommend keeping this provision)

Should any portion of the Office Modernization Leadership Services provided under an approved task order have to be repeated as a result of changes made by the State, such task order shall be amended to reflect such repetition and Contractor shall be paid for the repeat of such services an amount equal to that set forth on the Schedule of Values for such service. (Recommend removing)

Office Modernization Leadership Services will be invoiced based on task orders that are issued by the State based on Contractor's proposed Schedule of Values. Invoices for services provided under a task order may be submitted monthly. (Recommend keeping this provision)

Please accept or explain why recommendations could not be accepted and provide answers to questions in writing in order to expedite further review and consideration.

MKP



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: Melinda Parton

FROM: Chloe Truslow Shafer, Esq. *CS*

RE: Amendment Number Five to Jones Lang LaSalle Americas, Inc. ("JLL") Contract with the State of Tennessee (the "Fifth Amendment")

DATE: May 23, 2013

Please accept this response to your memorandum of issues dated April 19, 2013. As to your first sentence, while the Fifth Amendment was not provided to your office for execution until April 15, 2013, the first draft was provided to Terry Mason in your office on March 11, 2013. Terry and I also discussed the Fifth Amendment by phone on March 12, 2013. Additionally, Peter Heimbach and I provided information to Terry, upon her request, regarding the fees that would be paid for services to be provided under the Fifth Amendment prior to the ESC meeting on March 25, 2013. Having heard nothing from your office after the ESC meeting until the memorandum dated April 19th, we had assumed that your office had no further comments or issues with the Fifth Amendment. Accordingly, we began to process it for signature.

It appears that some additional background regarding the purpose of the Fifth Amendment would be helpful as you reconsider your review. The Office Modernization concept is an outgrowth of the success of Project T3. As other agencies and other governmental entities have inspected the Project T3 work and seen evidence of the successful leadership provided by JLL, DGS has received requests by such groups (TDOT, Comptroller's Office and the Legislative Branch, in particular) to have their spaces modernized and for DGS to utilize JLL for the leadership of such modernization efforts. The purpose of the Fifth Amendment is to establish a vehicle through which these other agencies and governmental entities can utilize JLL for office modernization projects. Until the 2013/2014 budget is signed and funding becomes available to those seeking office modernization services, task orders cannot be written and requests for amendments to the JLL Contract cannot be processed. However, it is critical to have the structure in place so that time sensitive projects can move forward once funding is made available.

As I believe we explained to SBC staff, the task order system and fee structure of the Fifth Amendment are critical to enable this Contract to be used as intended. As you know, the task order system is successfully utilized in a number of SBC contracts where flexibility is necessary and appropriate in order to carry out the needs of the State. The task order system would eliminate the need for amendments like the First Amendment which lay out in detail the scope of each subproject for which services are provided by JLL under the Contract. Even with this flexibility, however, SBC oversight remains since all projects utilizing services under the Fifth Amendment would have to be individually approved by the SBC and

REAL ESTATE ASSET MANAGEMENT

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future increases in the budget and sources of funding approved by the SBC. Given that there was no feedback from your office that this structure would be an issue in the weeks that your office has had Fifth Amendment for review, it was a surprise to see the structure raised as an issue in your April 19th memorandum.

As to the other items raised in your memorandum, please find our responses below.

1. Scope of Services. We concur that this section can be confusing to read. As you may recall, the structure of this section (restatement of the entire section where any revisions were made) was mandated by your office after the First Amendment. This restatement is in lieu of simply including the language that would be added or changed from the prior version, which is how legal documents are typically revised. In order to address the comments that you raised regarding confusion in this section, we would propose revising the paragraph as follows:

“A. SCOPE OF SERVICES:

The scope of services is more particularly described in the Scope of Services and Work Plan attached as Contract Attachment A to the Original Contract; the Scope of Project T3 Leadership Services attached as Schedule 1 the First Amendment to Contract and Exhibit A to the Fifth Amendment to Contract; and the Scope of Pre-Planning Tasks attached as Schedule 2 to the Third Amendment to Contract. The Scope of Services and Work Plan, the Scope of Project T3 Leadership Services, and the Scope of Pre-Planning Tasks are hereinafter collectively referred to as the “Contract Services”. The Contractor agrees to perform the services in accordance with the Request for Proposals, the Contract Services, and the Contractor’s Proposal dated November 9, 2011 all of which are made a part of this Contract and are incorporated herein by reference.”

2. Authorized Services. We are unclear as to what issues you are raising with this section. As we read the language, it is clear that the references to Schedule 1 and Exhibit A in the second sentence refer to those documents as referenced in the first sentence of the section; namely, Schedule 1 to the First Amendment and Exhibit A to the Fifth Amendment. As to the first red section, the references to Contract Attachment A to the Original Contract and Contract Attachment B to the Original Contract that you have included are not affected by the Fifth Amendment. Therefore, we believe that there is no need to reference these Contract Attachments since nothing in the Fifth Amendment affects the payment rates for services other than Project T3 Leadership Services and Office Modernization Leadership Services.

As this Contract is now being amended for the fifth time, we do not think it reasonable to rewrite the compensation sections of the Contract so that they are all included in Section C. In our opinion, making such a significant change at this point in the Contract would be unnecessary and only cause confusion and delay.

3. Scope of Project T3 vs. Scope of Office Modernization. As was discussed in our conversations with Terry regarding this Fifth Amendment, specific Office Modernization projects have not yet been identified. The initiation of such projects will be solely dependent on available funding. Because the initiation of such projects will require SBC action in the form of approval to revision in project and sources of funding, the SBC will have input in and oversight and knowledge of any such projects before they are initiated.

Because the specific projects and their sources of funding have not yet been identified, it is impossible to provide the information you are requesting. As you are aware, the State cannot

expend funds in excess of amounts approved by the SBC and multiple approvals are required to expend funds to provide services under the Fifth Amendment as referenced above.

4. Amendment Effective Date. Thank you for your typo correction. It will be made.

5. Schedule 1-A-1.

- a. Compensation for Original T3 Leadership Services. Paragraphs 1 and 3 of this section are unchanged from the First Amendment which was approved by the SBC. It is unclear what you are requesting regarding paragraph 1 of this section, if anything. As to paragraph 3, this language was part of a bargained for exchange between the State and JLL. JLL will not agree to the deletion of this paragraph and given the prior approval of the SBC of this language, it would be unfair and improper to require its deletion at this point. The language you have proposed to be added to paragraph 2 regarding master planning and facility assessments does not relate to the Original T3 Leadership Services and so we do not believe the addition of that language is helpful.
- b. Compensation for Office Modernization Leadership Services. We disagree with your position that the State should not have a contract vehicle ready for use by requesting parties in advance of their need. With respect to the fee issues, as we explained to Terry, the fee for the Office Modernization Leadership Services is the same percentage fee as the Project T3 Leadership fee that was approved in the First Amendment to the JLL Contract. In the Fifth Amendment, however, the fee is stated as a percentage rather than a dollar figure. Additionally, we explained to Terry how the 1% fee was set for the reduced scope- we negotiated down scope and cost with JLL to arrive at the fee amount. Accordingly, the rates for the services to be provided by JLL were either identical to previously approved rates or negotiated reductions in accordance with parameters your office previously provided.

We believe "Total Project Cost" as defined in the Fifth Amendment is the appropriate basis for determining the fees. "Project Scope and Source of Funding and MACC as approved by the SBC" would not capture all items that are paid in connection with a project. The "Total Project Cost" would be specifically identified in the task order requesting services and be the basis for which an increase in the maximum liability of the Contract was requested. Accordingly, each Total Project Cost is subject to the approval of the SBC.

We also disagree with the recommendation to delete language allowing for compensation to JLL for work that must be repeated. The risk that the State will act unreasonably is not one that JLL should have to assume. We have, however, tied this cost down by linking it to the schedule of values. Accordingly, we believe the language, as written, strikes the appropriate balance between the parties.

Please feel free to contact me or Peter Heimbaeh should you need to discuss any items in this memorandum or the Fifth Amendment further. We look forward to your expeditious approval of the Fifth Amendment which, as you saw, has already been signed by JLL, DGS, OSA and F&A.

Phil Williams

From: Terry Mason
Sent: Wednesday, May 15, 2013 9:03 AM
To: Melinda Parton
Subject: RE: JLL Contract
Attachments: JLL Contract and Amdts thru 5.pdf

Amendment #2 is the one that added the lease commissions and it clearly states that the "State has no authority or obligation to compel the execution of such agreements or payment of such lease commission".

From: Melinda Parton
Sent: Wednesday, May 15, 2013 8:47 AM
To: Terry Mason
Subject: JLL Contract

Terry,
Can you send me the JLL contract with all the amendments that we did in a PDF. Need Amendment #2 final version. Only have other commented and marked up documents.

Thanks

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
James K. Polk Building, 14th floor
melinda.parton@cot.tn.gov




STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

Facilities Management RFQ Memorandum

12/19/2012

Shay Oliphant
Director of Sourcing

This memorandum is intended to justify the selection of two vendors to issue the Facilities Management Request for Qualifications (RFQ) Solicitation. The State of Tennessee, Department of General Service's State of Tennessee Real Estate Asset Management (STREAM), plans to issue the Request for Qualifications (RFQ) to define minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting a vendor to provide the facility management services. The process outlined in the RFQ document is considered a competitive negotiation per Finance and Administration Rule 0620-3-3-.03 (3). The aforementioned F&A rule recommends that the procuring agency should identify and contact three potential services providers; however the Central Procurement Office considers only two vendors capable to perform these services at the high level of services standards required.

The State intends to identify and contact two potential service providers and select one vendor that can meet the State's needs for comprehensive facilities management services. It is the intent of the State to create a strategic partnership with a vendor who will follow "Class A BOMA Standards" for an integrated program of facility management as outlined in this RFQ.

The State will engage both Jones Lang LaSalle Americas, Inc and CBRE Group, Inc. These two companies were the best technically evaluated during the previous solicitation issued in 2011 for Facilities Assessment, Master Planning, and Facility Management Services (refer to Attachment A). Due to the results of that solicitation, it is in the best interest of the State to focus its resources on competitively negotiating with these two vendors.

Sincerely,

Andy Kidd
Sourcing Analyst

CENTRAL PROCUREMENT OFFICE

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(615) 741-1035 * FAX: (615) 741-0684 * WWW.TN.GOV/GENERSERV/

Date: 8/14/2012

Facility Assessment, Master Planning Facility Management Services
RFP Proposal Score Summary Matrix

SBC No. 400000-01-2011

	Qualification & Experience						Project Approach					Cost	Maximum 100 Points	Rank		
	Maximum 25 Points						Maximum 32 Points									
Evaluator	1	2	3	4	5	Average	1	2	3	4	5	Average	Total QE+PA	Normalized QE+PA	Cost Score	Total
Proposer																
Cassidy Turley	21.00	20.00	27.00	28.00	26.80	24.56	18.00	14.00	25.50	24.00	22.80	20.66	45.42	52.42		
CB Richard Ellis	31.00	31.50	31.00	32.00	38.85	32.87	25.00	28.00	20.50	26.00	31.90	29.28	80.65	70.60	10.94	80.84
Colliers International	18.00	15.00	13.50	21.00	15.00	16.70	7.00	12.00	21.00	18.00	23.00	16.20	32.90	37.07		
Jones Lang LaSalle	32.00	28.50	35.00	36.00	35.45	33.19	23.00	23.00	30.00	28.00	31.20	26.64	59.85	59.05	30.00	89.84
Tetra Tech	23.00	26.50	28.00	27.00	31.50	27.20	19.00	24.00	25.50	29.00	31.00	28.70	52.90	61.06	27.87	80.77
Highest Raw Score													60.65			

Methodology: The Average of the scores of all Evaluators for the Qualification & Experience, and Project Approach will be taken; then the scores will be normalized to give the highest Proposer raw score a value of 70 points. The formula is:

$$\frac{\text{Score for Qualifications Project Score Evaluator}}{\text{Highest Scoring Qualifications Proposer}} \times 70 \text{ Points} = \text{Normalized Score}$$

The lowest Proposer Weighted Cost value receives a score of 30 points. The formula is:

$$\frac{\text{Lowest Cost of Cost Proposer}}{\text{Cost for Proposed Design Evaluator}} \times 30 \text{ Points} = \text{Cost Score}$$

Note: Values in red above are scores that fall below the 55 point threshold requirement for qualifications, experience, & project approach as specified in the RFP, and the Cost Proposal will not be considered for the Proposer. (RFP Section 4.)

Proposer	Cost Amount	Score
Cassidy Turley	Cost not provided	
CB Richard Ellis	\$ 32,758,500.00	10.94
Colliers International	Cost not provided	
Jones Lang LaSalle	\$ 19,845,000.00	28.00
Tetra Tech	\$ 21,094,924.00	27.87
\$ 19,845,000.00		Lowest Proposed Cost

05 00 02

Phil Williams

From: Mary Anne Queen
Sent: Friday, December 21, 2012 8:45 AM
To: 'Jessica Robertson'
Cc: Melinda Parton; Terry Mason; Bryan Chriske; Andy Kidd
Subject: RE: Facilities Management RFQ

Thank you! We will like a copy of the justification before we complete our review.

From: Jessica Robertson [<mailto:Jessica.Robertson@tn.gov>]
Sent: Friday, December 21, 2012 8:39 AM
To: Mary Anne Queen
Cc: Melinda Parton; Terry Mason; Bryan Chriske; Andy Kidd
Subject: Re: Facilities Management RFQ

We actually have a draft of this justification already in progress, so we're on the same page!

If you'd like a copy of the final (or draft) justification please let us know.

Thanks!
Jessica
Sent from my iPhone

On Dec 21, 2012, at 8:30 AM, "Mary Anne Queen" <Mary.Anne.Queen@cot.tn.gov> wrote:

Jessica,

We are working on our review notes of the facilities management RFQ. My office has discussed the subject of limiting the procurement to the top two proposers from the assessment RFP. We ask that the record of the facilities management procurement include an explanation of the reasons for the limitation.

We will get the rest of our questions and comments to you next week.

Thank you.

Mary Anne



**STATE OF TENNESSEE
COMPTROLLER OF THE TREASURY
OFFICE OF MANAGEMENT SERVICES**

**Justin P. Wilson
Comptroller**

**James K. Polk State Office Building
505 Deaderick Street, Suite 1400
Nashville, Tennessee 37243-1402
Phone (615) 401-7720**

**Melinda K. Parton
Director of Management
Services**

January 11, 2013

TO: Jessica Robertson, Chief Procurement Officer

FROM: Melinda K. Parton, Director of Management Services

SUBJECT: RFQ for Facilities Management

Section 1 of the RFQ for facilities management states that the procurement is being conducted as a competitive procurement process. Department of Finance and Administration Rule 0620-3-3-.03(c) states:

“Upon approval to proceed with the Competitive Negotiation process, the procuring agency shall identify and contact at least three potential service providers for Competitive Negotiation, provided, however, that the procuring agency shall contact minority, disadvantaged, and small business service providers as required by Department of Finance and Administration Office of Contracts Review Policy Guidelines. . . .”

We reviewed Andy Kidd’s December 19, 2012 memo which stated that only two potential service providers would be contacted. The memo states that of all of the proposers who responded to a 2011 RFP for facilities assessment, master planning, and facility management, only the two best evaluated would be allowed to propose in response to the RFQ for Facilities Management. The explanation was that the Central Procurement Office determined that only the two best evaluated would be capable of performing facilities assessment services. Our review of the RFP documentation indicates that three proposers met the cutoff score set forth in the RFP.

Under the current rules, the decision to proceed with two and not three potential vendors would necessitate an exception to the rules. Thus, there needs to be an exception request approved by the Chief Procurement Officer. In the exception request, the determination that only two vendors would be capable of providing these services needs to be justified in specific detail. Also, the decision to limit this procurement to a few vendors and not allow the vendor community to respond should be explained in detail.

Please feel free to contact us if we can be of any assistance.



STATE OF TENNESSEE
CENTRAL PROCUREMENT OFFICE

REQUEST FOR QUALIFICATIONS # 32101-00124
FOR COMPREHENSIVE FACILITIES MANAGEMENT

1. INTRODUCTION

The State of Tennessee, Department of General Service's State of Tennessee Real Estate Asset Management (STREAM), hereinafter referred to as "the State," has issued this Request for Qualifications (RFQ) to define minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting a Vendor to provide the needed service. The process outlined in this document is considered a competitive negotiation per Finance and Administration Rule 0620-3-3-.03 (3).

Through this RFQ, the State seeks to buy the best services at the most favorable, competitive prices and to give all qualified businesses, including those that are owned by minorities, women, persons with a handicap or disability, and small business enterprises, opportunity to do business with the state as contractors and sub-contractors.

The method of this RFQ will follow the guidelines set forth through Finance and Administration (F&A) Rule 0620-3-3-.03 (3). The State intends to identify and contact at least two (2) potential service providers for Competitive Negotiation. The State will communicate the requirements of the State, solicit proposals by means of F&A Rule 0620-3-3-.03 (2), and clarify and negotiate as necessary in the best interests of the State, ensuring that all communication is conducted in a manner so as not to disclose any information that would give one or more Respondents unfair advantage or unfairly enable one or more Respondents to improve their proposal. The State will document all the responses from Respondents. Once the evaluation process is complete, the State will engage the Respondents meeting the required qualifications to negotiate cost and finalize contract terms and conditions.

Comment [COT1]: This appears to be an alternative procurement method rather than a competitive negotiation under the existing F&A rules.

Comment [ak2]: The CPO believes this would be considered a Competitive Procurement as it is. Alternative Procurement is not applicable for this solicitation.

Comment [COT3]: Respectfully disagree. This is not a competitive procurement.

Comment [COT4]: CPO has indicated that only two vendors will be contacted and allowed to propose in response to the RFQ. We need an explanation of how those two were selected and why others are not being pursued or permitted to propose.

Statement of Procurement Purpose and Method

The purpose of this RFQ is to select one (1) Vendor that can meet the State's needs for comprehensive facilities management services. It is the intent of the State to create a strategic partnership with a Vendor who will follow "Class A BOMA Standards" for an integrated program of facility management as outlined in this RFQ. The State's goal is to ensure high quality service standards are maintained at a cost in accordance with competitive benchmarks. The State will look to the successful Vendor for innovative, creative solutions.

The State's objectives in outsourcing facility management services are:

- Improved quality of flexible, timely and responsive services;
- Centralized management of the in-scope services;
- Implementation of "best in class" practices;
- Continuous innovation and leadership resulting in creative solutions;
- Reduced operating costs;
- Success measured by Key Performance Indicators; and
- Scalable solution that is flexible enough to evolve with the State's need

The State's expectation is that this will be an initial five (5) year contract with the option to exercise two (2) additional one-year terms following the initial five (5) year contract term. The State has the ability to act in the best interests of the State related to contract award and contract length.

OIR – GIS	Office for Information Resource – Geospatial Information System
PLI	Professional Liability Insurance
Products	Items offered by the supplier to the buyer as specified in this RFQ
Proposal	Denotes a response which a service provider provides for competitive consideration and comparison under any competitive procurement methodology
Qualified Non-Profit Agencies	Any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3) as amended and which contracts with the department of mental health and substance abuse services to provide services to the public (TCA 33-2-401)
SBC	State Building Commission
Scope of Services	States expectations of the products or services to be rendered by the suppliers as stated in the Pro Forma Contract
SLA	Service Level Agreement
State	The State of Tennessee, including all Agencies.
State Agency	Departments and divisions within the State organization that facilitate a variety of roles necessary for State operations
Vendor	The selected Respondent that enters into contract to supply or sell products or services to the State

2. SCOPE OF SERVICE OPPORTUNITY

The State envisions partnering with one (1) Vendor to provide comprehensive facilities management services. The State may also want to take advantage of certain synergies and potentially contract for additional real estate services such as pre-planning services and project management services with the successful Vendor. The State may award all or part of this RFQ based on the best interests of the State. Additionally, the State may seek to award additional services within the general scope of this RFQ to the successful Vendor. More detailed information on each category of services is listed below.

2.2.1 Background Information/ Current Initiatives

Facility Assessments

In CY 2011/2012, the State, using a contractor, conducted a Facility Assessments on 33 State buildings, covering 4.6 million square feet, in the State's four major metropolitan areas. A master occupancy plan was also completed, which contained recommendations on more efficient use and operation of State real estate by moving away from low density and high operating costs.

Some of the objectives of this assessment were to:

- Identify and prioritize short and longer term needs of all the statewide capital and maintenance projects based on facility assessments.
- Present an approach to reducing the State's ongoing facility-related operating expenses.
- Present analysis of the State's existing owned and leased real estate portfolio and recommend short-term and long-term plans for more efficient operation.
- Identify opportunities to increase State space utilization efficiency and effectiveness through co-location and other improvements to interagency and intra-agency occupancy.

Comment [COT5]: Only if evaluated up front.

Comment [ak6]: These will be evaluated in the cost proposal.

Comment [COT7]: We need to clearly cap the max to be spent on additional services.

Comment [ak8]: At this time we will not be able to cap additional services at this time.

Comment [COT9]: We see that additional services will be weighted ten percent of the stated sq. footage. This is good, but it is in the best interests of the State to cap these additional services. Ten percent may be a good max on the additional services.

reporting. This module allows Maintenance Service Requests to be tracked and assigned to supervisors, work teams and maintenance personnel and enables tracking of information and definition of service level agreements and tracking key performance indicators. In the next five years additional modules of ARCHIBUS relating to facility maintenance will be implemented, including condition assessment and preventative maintenance.

The State is interested in understanding how the successful Respondent of this RFQ will track and document maintenance activities in the State's On Demand Work ARCHIBUS module. Additionally, the Respondent could be asked to participate where necessary in utilization of new ARCHIBUS modules implemented by the state including potentially Condition Assessment and Preventative Maintenance.

Comment [COT10]: The language in the addendum is being moved into the pro forma contract. The contract should require the contractor to participate in utilization of new modules.

2.2.2 Facilities Management

2.2.2.1 General:

The State desires to partner with one (1) Vendor to assist in the management of all state-owned and leased facilities in various locations throughout the State. The State understands that management services can and will differ between state-owned and Leased facilities. In the Cost Proposal (Attachment G), the State requests that the respondent include a management fee for "State-Owned Facilities" (Tier 1) as well as "Leased Facilities" (Tier 2). The state is aware and expects that the management of state-owned facilities will differ from that of leased facilities which is not as inclusive as the list seen below. The state is requesting each respondent to describe in detail how these services might differ (refer to RFQ Attachment C, Section C.12)

The state-owned facilities contain approximately 6,813,600 gross square feet and the leased facilities include approximately 3,609,903 gross square feet which will be a part of the original scope for this initiative. Information on the specific facilities is listed in Attachment H of this RFQ. This list is intended to be an aid for Respondents and is **not** intended to capture every building that could originally be in-scope for this contract. Over the life of this contract, the State expects that the specific facilities will change. The buildings that are included in the initial phase of the project are owned by the State; however, the State reserves the right to utilize the resulting contract for leased space. Additionally, the exact services that are needed for each building will vary based on the building's use, location and tenants. While the State has attempted to provide some of this information as an aid to Vendors, the State has not captured all possible services that will be needed per location. Any changes in scope will be made via an amendment to the contract.

Comment [COT11]: We need to make sure that the cost proposal (Attachment G) allows for a rate for leased space and a rate for owned property and that each rate has appropriate weights in the cost proposal.

Comment [ak12]: Confirmed

Comment [COT13]: Both rates are included on the management fee tab but not on the intro, scoring and summary guide tab. Both rates are required to be disclosed, but only one is being evaluated.

The State currently delivers these services internally or through contracted relationships with approximately 430 contracts. The State currently has a variety of contracts in place today that represents approximately \$50 million of subcontracted spend. Please see below for past spend:

Facilities Management Categories	FY '12
Management Services	\$ _8,142,859
Security	\$ _7,135,958
Cleaning	\$ _5,955,714
Repair / Maintenance	\$ _5,335,116
Administrative	\$ _1,178,946
Roads / Grounds	\$ _766,640
Utilities Services	\$ 20,944,045
TOTAL	(a) \$ 49,459,278

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Since this number is based on past usage and may fluctuate, the State is not in a position to guarantee that future spending will be at these levels and these figures are not to be construed as an amount to be offered under this RFQ. Nevertheless, the amount is provided as an aid to Vendors in responding to this RFQ.

Facilities Management Services include (but are not limited to) the following:

- Call center/Customer service center;
- Building operations;
- Preventative maintenance;
- Vendor and contract management;
- Facilities related purchasing;
- Safety, emergency preparedness and disaster recovery plans/Support;
- Inspections/ Regulatory compliance/ Environmental assessments;
- Energy Management/ Utilities;
- Administrative Site Services;
- Financial and Accounting;
 - Accounts Payable and integration with the State's ERP system (PeopleSoft v8.9);
 - Cost Management and Budgeting (operating and capital);
 - Comprehensive Financial Reporting;
 - Comprehensive Operational Reporting;
- Project Management;

It is the State's intent to have one (1) Vendor providing additional real estate services beyond comprehensive facilities management services. These services are to be viewed as "a-la carte" services that the State may or may not contract with Vendor to provide. The professional staffs associated with these services are to be viewed as "on-call" staff. For more information, please refer to the cost proposal, Attachment G. The State will exercise the right to contract for these services at its sole discretion if it is in the best interests of the State.

These additional services include (but are not limited to) the following:

- Pre-planning
- Office planning
- Mail, Shipping and Receiving
- Move management
- Sustainability management
- Energy management
- Project management

Comment [COT14]: Needs to be included in evaluation of costs

Comment [ak15]: Agreed – see update cost proposal.

Comment [COT16]: Now, the contract needs to clearly state the understanding of the parties that all costs are set forth in the contract.

Comment [COT17]: Won't we use the existing contract with JLL for preplanning services. Are we not rebidding the contract for preplanning and assessment services when it terminates?

Comment [ak18]: The existing contract will expire, and at that point we would like to have a comprehensive real estate vendor.

Throughout this contract the State may request that the Vendor provide any or all of the aforementioned additional services. However, any additional services requested may require the approval of other State authorities, including, without limitation, the State Building Commission, and could be contracted for under a separate agreement.

The resulting contract from this RFQ will have the potential to be used by other governmental bodies within the geographic limits of the State of Tennessee, and any corporation which is exempted from taxation under 26 U.S.C. Section 501 (c) (3) as amended and which contracts with the department of Mental Health and Substance Abuse Services and where applicable, the Department of Intellectual and Developmental Disabilities. To provide services to the public (TCA 33-2-401 et seq.). Other governmental entities and qualified nonprofits will enter into their own individuals contracts (participating addenda) using the rates set forth in this contract (as the master contract). (Please refer to RFQ Attachment C, Section C.23)

Comment [COT19]: Partial sentence?

beyond those Contractor personnel dedicated thereto (in accordance with the most recent Approved Budget (as hereinafter defined), as modified by the Parties), State and Contractor shall promptly meet and negotiate in good faith an appropriate adjustment of the Base FM Fee and the reimbursement provisions of Section C.3.e. below.

(2) KPI Adjustment.

- (a) Beginning in [2014], no later than January 15th of each year of the Term, and within thirty (30) days following the expiration or earlier termination of the Contract, Contractor and State shall meet (such meeting, the "KPI Meeting") to review Contractor's success in achieving its annual performance objectives for the prior year (or, as applicable, the prior partial year). Such performance shall be measured in accordance with key performance indicators (each, a "KPI") based upon objective and clearly defined measurable criteria designed to measure quality and cost issues. The initial KPIs, and a scoring methodology, will be established and agreed upon during the Transition Period. Upon the determination of the Strategic Evaluation Team, KPIs may be adjusted, deleted or added as deemed appropriate for the subsequent year. Contractor's relative success in achieving the KPIs shall determine the amount of the KPI adjustment to be paid by State, as described in the next paragraph. State acknowledges that Contractor's ability to perform under the Contract and attain high KPI scores is subject to State performing its obligations under the Contract. For KPIs that require a baseline, actual results for the preceding twelve (12) months shall be used as the base year.
- (b) Depending upon Contractor's overall KPI score for the prior year (or partial year, as applicable), Contractor shall be eligible to receive an amount up to the remaining one half (1/2) of the Base FM Fee as an incentive adjustment. Contractor's KPI results shall be mutually determined by State and Contractor reasonably and in good faith. Depending on the outcome, any such portion of the Base FM Fee to be paid to Contractor shall be paid within forty five (45) days following the KPI Meeting.

e. Reimbursements and Charges. As part of the compensation for the Services hereunder, State shall make the following reimbursements and payments:

- (1) Employee Salaries and Burden Charge. State shall reimburse Contractor for all salaries, and pay to Contractor an associated burden charge, with respect to all fully or partially dedicated Contractor Employees employed in providing the Services, the aggregate amounts of which shall be part of the Approved Budget; provided, however, that State shall not reimburse Contractor for any bonuses paid to Contractor Employees. The burden charge shall be set at the rate of [_____ percent (___%)] of the sum of the base salary of each Contractor Employee, as set forth in the Approved Budget or otherwise approved by State, and shall be deemed to include and cover all employee related benefits (e.g., health insurance and workers' compensation insurance), any claims that may arise under the employee health and workers' compensation insurance programs, including self insurance, and all employee related overhead and administrative charges associated therewith. The Parties acknowledge the burden charge is determined based on a fixed rate and will not be reconciled to

Comment [COT29]: Still need to discuss why this burden charge should not be evaluated in the cost proposal.

intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.

- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.13. Copyrights and Patents. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State for infringement of any laws regarding patents or copyrights which may arise from the Contractor's performance of this Contract. In any such action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any final judgment for infringement. The Contractor further agrees it shall be liable for the reasonable fees of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State. The State shall give the Contractor written notice of any such claim or suit and full right and opportunity to conduct the Contractor's own defense thereof.

E.14. Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification for such decision and non-competitive procurement.

E.15. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

E.16. Limitation of Liability. The parties agree that the Contractor's liability under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount detailed in section C.1., as the same may be amended, PROVIDED THAT in no event shall this section limit the liability of the Contractor for intentional torts, criminal acts, or fraudulent conduct. Neither Contractor nor State shall be liable for any lost or prospective profits or any other indirect, consequential, special, incidental, punitive, or other exemplary losses or damages, whether based in contract, warranty, indemnity, negligence, strict liability or other tort or otherwise, regardless of the foreseeability or the cause thereof. State acknowledges and agrees that Contractor shall not have any liability with respect to any loss, damage, claim or expense incurred by or asserted against State (including, without limitation, any payment missed or made incorrectly) arising out of or based upon any erroneous or incomplete data provided by State or any third party or otherwise contained in State's databases regarding any owned, leased or subleased property.

E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation,

Comment [ak32]: Since the State will not be directly procuring any of these contracted services, we do not feel it necessary to bind ourselves to giving any approval from the State Agency Head.

However, we do want each procurement to be competitively bid when practical, and we would like the vendor to document that process and provide justification if it is a non-competitive procurement.

Each Vendor will also be incentivized through the KPI "Savings Creation" which will force the vendor to procure services competitively.

Comment [COT33]: The vendor determines that a competitive method is not practical? It is not simply a matter lowest cost – it is a matter of fair dealing and transparency when using State dollars.

Comment [COT34]: Why has language requiring "a written justification, approved by the State Agency Head's Title, for such decision and non-competitive procurement" been removed?

Competitive Procurements. This Contract provides for reimbursement of the cost of goods, materials, supplies, equipment, or contracted services. Such procurements shall be made on a competitive basis, where practical. The Contractor shall maintain documentation for the basis of each procurement for which reimbursement is paid pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method was not practical, said documentation shall include a written justification, approved by the State Agency Head's Title, for such decision and non-competitive procurement.

Phil Williams

From: Melinda Parton
Sent: Tuesday, January 22, 2013 4:45 PM
To: Jessica Robertson
Subject: RFQ for Facilities Management Rule Exception
Attachments: Rule Exeption Request - RFQ.PDF; RFP Results Facilities Assmt and Master Planning.pdf

Good Afternoon Jessica,

Wanted to gather further clarification to make clear our understanding regarding the request for the rule exception to justify contacting two (2) vendors rather than three (3) as mentioned in F&A Rule 0620-3-3-.03(3).

The following was provided as justification, "The State will engage both Jones Lang LaSalle Americas, Inc ("JLL") and CBRE Group, Inc. ("CBRE"). These two companies were the best technically evaluated during the previous solicitation issued in 2011 for Facilities Assessment, Master Planning, and Facility Management Services (refer to Attachment A). The results of this solicitation indicated that only JLL and CBRE received technical evaluation scores within the competitive range of acceptability"

Attached also is the memorandum to the file summarizing the results of the evaluation of the previous solicitation performed in 2011. The results of the solicitation and more specifically the RFP Proposal Score Summary Matrix indicated that three vendors met the technical evaluation scores; JLL, CBRE and Tetra Tech. The summary matrix included a note that stated, "Values in red above are scores that fall below the 53 point threshold requirement for qualifications, experience, & project approach as specified in the RFP,"

The following was the normalized Q&E+PA or technical qualifications scoring total for the three, which clearly reflects that Tetra Tech met the technical qualifications threshold of 53 points which allowed them to proceed forward to the cost evaluation and scoring:

JLL	69.05
CBRE	70.00
Tetra Tech	61.06

Was there a different set of criteria identified to define the competitive range of acceptability for this competitive negotiation that differed from what was considered an acceptable level of scoring to meet the threshold for qualifications under the RFP in 2011 from which vendors were selected for this procurement?

Thanks,

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
James K. Polk Building, 14th floor
melinda.parton@cot.tn.gov
(615) 401-7770



STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES

STEVEN G. CATES
COMMISSIONER

BILL HASLAM
GOVERNOR

MEMORANDUM

TO: Distribution
FROM: Howard Symons
RE: Request for Proposals –
Facility Assessment, Master Planning and Facilities Management Services RFP
State of Tennessee
SBC No. 460/000-01-2011
DATE: Tuesday, December 06, 2011

The RFP solicitation for this statewide services Consultant was completed after following due process. The RFP was advertised in the Nashville Tennessean and posted on the web on October 19, 2011.

There were twenty (20) firms represented in attendance at the Pre-Proposal Conference held in Nashville, at the Wm. R. Snodgrass Tennessee Tower multi-media room facility. Letters of Intent to Propose were received from eleven (11) firms. Proposal documents from six (6) firms were submitted. One Proposal did not comply with RFP requirements and was deemed non-response.

An Evaluation Team carefully evaluated five proposals. The Evaluation Team consisted of five State employees from both the Departments of General Services and Finance and Administration, all having technical knowledge of the project's requirements. All scoring and comment sheets are located in the RFP files. Administration of the RFP process was managed by RFP Coordinator Howard Symons with assistance from Department of General Services staff.

Summary of Evaluation:

The scoring of Proposals is based on a combined score for Qualifications, Experience, Project Approach and Cost as stated in the RFP text.

Evaluators rated two of the Proposals below the 53-point threshold, which is 75% of the allowed points for Qualifications, Experience, and Project Approach. Cost Proposals for these Proposers were not considered in accordance with the RFP requirements.

REAL ESTATE ASSET MANAGEMENT

312 ROSA L. PARKS AVENUE, SUITE 2200 • NASHVILLE, TENNESSEE 37243
(615) 741-2315 • WWW.FN.GOV/GENERALSERV/

The three top-scoring Proposers in order of evaluation scores are:

1. Jones Lang LaSalle Americas, Inc.
2. Tetra Tech
3. CB Richard Ellis Global Corporate Services

Please refer to the attached Summary Score Matrix for this RFP for a summary of evaluation.

Attached for your review in PDF format are:

- Copy of the RFP Executive Summary, and,
- Tabulation Chart of Proposal Scoring Summary and Cost Proposal results.

Please contact Howard Symons if you have any questions.

Distribution: Steve Cates, Bob Oglesby, Jose McNeil, Peter Heimbach, Janie Porter, Melinda Parton, Jonathan Rummel, David Thurman, Josh Stites, Jessica Robertson, Thad Watkins, File

EXECUTIVE SUMMARY

Facility Assessment, Master Planning and Facilities Management Services RFP

SBC NUMBER: 460/000-01-2011

PROJECT DESCRIPTION

The State intends to secure a contract with a single contractor/service-provider to provide professional and technical services for the State, hereinafter referred to as the "Proposer" for the purposes of this RFP.

Services shall include:

- **Facility Assessment**; including but not limited to a Facilities Condition overview, Energy Audits, an ongoing Operations and Maintenance Costs Reduction Study, and Facilities Assessment Maintenance Guides and Training.
- **Master Planning**; including but not limited to a Space Utilization Housing Plan, a Space Ownership and Leasing Plan, Facility Identification, a GIS Database Validation Plan, Project Prioritization, and Master Planning Maintenance Guides and Training.
- **Facility Management Services**; including but not limited to providing overall management and daily efficient operation of State owned buildings and leased space identified in the Facilities Revolving Fund ("FRF") and providing necessary facility maintenance and repair.

The State requested proposals of services from experienced, established companies that have specialized knowledge and expertise regarding large-scale analyses and management of a large portfolio of state-government properties and facilities.

EXPECTATIONS AND PROJECT GOALS

The successful Contractor/Service-provider will analyze the State's existing owned and leased real estate portfolio and recommend short-term and long-term plans for more efficient operation. Other scope of work components include:

- Increase State space utilization efficiency and effectiveness through co-location and other improvements to inter-agency and intra-agency occupancy.
- Identify and prioritize short and long term needs of all statewide capital and maintenance (current and deferred) projects based on facility assessments.
- Manage and maintain the State's current FRF facilities in the most efficient and economic manner, and,
- Reduce the State's ongoing facility-related operating expenses.

RFP APPROACH AND CONTRACTOR SELECTION

Through the RFP process, the State will identify and select a Contractor/Service-provider with the best combination of attributes to accomplish the scope of work. The State will evaluate and score submitted Qualifications and Experience information as well as Project Approach and a Cost Proposal.

The three Proposers with the highest Proposal scores (Qualifications, Experience, Project Approach, and Cost) will be submitted to the Executive Subcommittee of the SBC.

Date: 12/6/2011

Facility Assessment, Master Planning Facility Management Services
RFP Proposal Score Summary Matrix

SBC No. 460/000-01-2011

Evaluator	Qualification & Experience Maximum 38 Points					Project Approach Maximum 32 Points					Q&E+PA		Cost Score	Maximum 100 Points	Rank
	1	2	3	4	5	Average	1	2	3	4	5	Total Q&E+PA			
	Average						Average								
Proposer															
Cassidy Turley	21.00	20.00	27.00	28.00	26.80	24.56	18.00	14.00	25.50	24.00	22.80	20.86	52.42		
CB Richard Ellis	31.00	31.50	31.00	32.00	36.35	32.37	25.00	28.00	30.50	26.00	31.90	28.28	70.00	10.94	80.941
Colliers International	13.00	15.00	19.50	21.00	15.00	16.70	7.00	12.00	21.00	18.00	23.00	16.20	37.97		
Jones Lang LaSalle	32.00	29.50	33.00	36.00	35.45	33.19	23.00	23.00	30.00	26.00	31.20	26.64	69.05	30.00	99.054
Tetra Tech	23.00	26.50	28.00	27.00	31.50	27.20	19.00	24.00	25.50	29.00	31.00	25.70	61.06	27.37	88.424
Highest Raw Score													60.65		

Methodology: The Average of the scores of all Evaluators for the Qualifications & Experience, and Project Approach will be totaled, then the scores will be normalized to give the highest Proposer raw score a value of 70 points. The formula is:

$$\frac{\text{Score for Qualifications Proposal Being Evaluated}}{\text{Highest Scoring Qualifications Proposal}} \times 70 \text{ Points} = \text{Normalized Score}$$

The lowest Proposer Weighted Cost value receives a score of 30 points. The formula is:

$$\frac{\text{Lowest Cost of Cost Proposals}}{\text{Cost for Proposal Being Evaluated}} \times 30 \text{ Points} = \text{Cost Score}$$

Note: Values in red above are scores that fall below the 53 point threshold requirement for qualifications, experience, & project approach as specified in the RFP, and the Cost Proposal will not be considered for the Proposer. (RFP Section 4.)

Proposer	Cost Amount	Score
Cassidy Turley	Cost not opened	
CB Richard Ellis	\$ 52,769,500.00	10.94
Colliers International	Cost not opened	
Jones Lang LaSalle	\$ 19,245,000.00	30.00
Tetra Tech	\$ 21,094,924.00	27.37
	\$ 19,245,000.00	Lowest Proposed Cost

05 00 02

Rule Exception Request

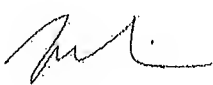
Route completed request, as one file in PDF format, via e-mail attachment sent to: Agsprrs.Agsprsr@state.tn.us

APPROVED

Jessica Robertson (PP)

Chief Procurement Officer

Request Tracking #		
1. Contract #	RFQ 32101-00124	
2. Service Caption	REQUEST FOR QUALIFICATIONS # 32101-00124	
3. Contractor	TBD	
4. Contract Period (with ALL options to extend exercised)	84 months	
5. Contract Maximum Liability (with ALL options to extend exercised)	\$ TBD	
6. Rule (for which the exception is requested)	<input type="checkbox"/> 0620-3-3-.03(2)(a) OR 0620-3-3-.05 requiring compliance with relevant model guidelines (only if required by oversight authorities) <input type="checkbox"/> 0620-3-3-.05(5) requiring the prescribed Nondiscrimination contract provision <input type="checkbox"/> 0620-3-3-.07(5) prohibiting a contract term greater than five (5) years <input type="checkbox"/> 0620-3-3-.07(8) prohibiting a contract with a former state employee in within six (6) months of termination <input type="checkbox"/> 0620-3-3-.07(22) requiring contractor travel reimbursement in accordance with state travel regulations <input checked="" type="checkbox"/> OTHER (cite the relevant rule below) Competitive negotiation per Finance and Administration Rule 0620-3-3-.03 (3).	
7. Explanation of Rule Exception Requested	This Rule exception request is to justify contacting two (2) vendors rather than three (3) as mentioned in Finance and Administration Rule 0620-3-3-.03 (3).	

Request Tracking #	
8. Justification	<p>The State of Tennessee, Department of General Service's State of Tennessee Real Estate Asset Management (STREAM), plans to issue the Request for Qualifications (RFQ) to define minimum service requirements; solicit proposals; detail proposal requirements; and, outline the State's process for evaluating proposals and selecting a vendor to provide the facility management services. The process outlined in the RFQ document is considered a competitive negotiation per Finance and Administration Rule 0620-3-3-.03 (3). The aforementioned F&A rule recommends that the procuring agency should identify and contact three potential services providers; however the Central Procurement Office considers only two vendors qualified to perform comprehensive facilities management services at the high level of services standards required by the State.</p> <p>The State intends to identify and contact two potential service providers and select one vendor that can meet the State's needs for comprehensive facilities management services. It is the intent of the State to create a strategic partnership with a vendor who will follow "Class A BOMA Standards" for an integrated program of facility management as outlined in this RFQ.</p> <p>The State will engage both Jones Lang LaSalle Americas, Inc ("JLL") and CBRE Group, Inc. ("CBRE"). These two companies were the best technically evaluated during the previous solicitation issued in 2011 for Facilities Assessment, Master Planning, and Facility Management Services (refer to Attachment A). The results of this solicitation indicated that only JLL and CBRE received technical evaluation scores within the competitive range of acceptability. Due to the results of that solicitation, which was nearly identical in scope and close in proximity of time, it is in the best interests of the State to focus its resources on competitively negotiating with these two vendors.</p>
<p>Agency Head Signature and Date <i>(contracting agency head or authorized signatory)</i></p> <div style="display: flex; align-items: center;">  <div> <p>Digitally signed by Tami Robison DN: cn=Tami Robison, o=InterIm Deputy Commissioner, ou=State of TN - Department of General Services, email=tami.robison@tn.gov, c=US Date: 2013.01.18 08:05:27 -06'00'</p> </div> </div>	

From: [Jonathan Rummel](#)
To: [Tre Hargett](#)
Subject: FW: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952
Date: Wednesday, May 15, 2013 4:22:32 PM

fyi

Jonathan

From: Melinda Parton [<mailto:Melinda.Parton@cot.tn.gov>]
Sent: Wednesday, May 15, 2013 1:41 PM
To: Chloe Shafer; Terry Mason; Aaron Flener
Cc: Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Janie Porter; Tami Robison
Subject: RE: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Chloe,

I am healing very well and feeling a lot better. Appreciate you asking.

I would prefer you seek competition for the "broker of services at this point" so that we know we are getting a good rate for whomever is our broker for which we would pay for their services. JLL can participate in the bidding to offer their best pricing. This was negotiated with JLL with no opportunity for anyone else to offer their services. Don't agree with continuing to negotiate services with JLL without competition.

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
James K. Polk Building, 14th floor
melinda.parton@cot.tn.gov
(615) 401-7770

From: Chloe Shafer [<mailto:Chloe.Shafer@tn.gov>]
Sent: Wednesday, May 15, 2013 1:25 PM
To: Melinda Parton; Terry Mason; Aaron Flener
Cc: Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Janie Porter; Tami Robison
Subject: RE: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Melinda,

Thanks for your email. I hope you are feeling better. We agree that a revision to Amendment 2 might be the best way to solve this issue. Can you let us know with whom we should work from your office to explore that option?

Thanks,
Chloe

Chloe Truslow Shafer, Esq.

Real Estate Compliance Director

Department of General Services

312 Rosa L. Parks Avenue

Nashville, Tennessee 37243

Phone: 615.741.1348

Mobile: 615.210.2638

Email: chloe.shafer@tn.gov

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From: Melinda Parton [<mailto:Melinda.Parton@cot.tn.gov>]

Sent: Wednesday, May 15, 2013 10:18 AM

To: Chloe Shafer; Terry Mason; Aaron Flener

Cc: Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Ron Colter; Janie Porter

Subject: RE: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Good Morning Chloe,

Even though JLL has a right under contract amendment #2 to collect a commission from the lessor, this is a cost to the State of Tennessee no matter how the payment is set up. If a commission was not being charged, the costs to the State would be lower. Therefore, it is our position that if it is a cost to the State it should be evaluated for each proposer as a cost for a true apples to apples comparison and not just reported.

Your comment that, "In reviewing the RFPs on the street and some of the responses, we determined that we had set up the evaluation system such that proposers could gain a competitive advantage by not including a lease commission to JLL in their rent," does not give an advantage when all factors are evaluated evenly including the commission and rent. It appears to me that the market may be reflecting that we receive a more competitive cost associated with no commission when the commission is included in the cost evaluation.

Also, when you state, "The question and the adjustment are intended to be handled in the same way we will handle a situation where a proposer intends to deliver space that does not meet the Landlord Delivery Requirements. As you may recall, under that scenario, the proposer discloses deviations from the Landlord Delivery Requirements and then the State adjusts his proposal to take

into account the fact that the State will have to pay the costs associated with bringing the space up to the Landlord Delivery Requirements standard," the intent of the deviations is to not allow the State but allow the lessor to adjust for those deviations that were not included but if the deviation could be provided by other lessors they would be afforded the opportunity to adjust their entire costs as well so no one has an unfair advantage. Also want to clarify that we agreed that "delivery requirements" and "other options" are two different things and the proposal should separate these two items for evaluation purposes. If it is a delivery requirement, it must be met, but if another cost option is provided that is not required, we can consider the option once we have given all proposers the opportunity to propose such other option that may have been provided by one proposer and not the others. This would provide the apples to apples comparison.

The amendment to the contract promised no obligation to pay the commission but that JLL could charge a commission up to 4%. If we want JLL to receive compensation for their services (which we should be willing to pay for services provided) it might be time to evaluate if the contract payment methodology in amendment #2 to the contract with JLL by the lessor may not have been the best approach and these costs should be run through the State, since they are true costs to the State for services provided.

Thanks,

Melinda Parton, CGFM
Director of Management Services
Comptroller of the Treasury
James K. Polk Building, 14th floor
melinda.parton@cot.tn.gov
(615) 401-7770

From: Chloe Shafer [<mailto:Chloe.Shafer@tn.gov>]
Sent: Wednesday, May 15, 2013 8:34 AM
To: Terry Mason; Aaron Flener
Cc: Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Ron Colter; Janie Porter
Subject: RE: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Terry,

Thanks for taking my call on this issue. As we discussed, the purpose of including information on the commission that the proposer intends to pay to JLL (be that 0% or something more) is intended to allow the State to evaluate the proposals on an apples to apples basis. In reviewing the RFPs on the street and some of the responses, we determined that we had set up the evaluation system such that proposers could gain a competitive advantage by not including a lease commission to JLL in their rent. We would like to eliminate the effect of that competitive advantage in the evaluation process only and the revised language in the amendment is what we determined to be the best way to do so.

While the State, under the Second Amendment, is not obligated to require that a commission be paid, we do have an obligation to support JLL's right to receive a commission. The spirit of the arrangement between JLL and the State, as embodied in the Second Amendment is that JLL will

receive lease commissions in exchange for its services. Additionally, as you know, the State desires that JLL be compensated for the valuable leasing services that it is providing under the contract so that they will continue to perform the high level of performance we are seeing today and so that the State will receive rebates. If we set the framework so that there is a competitive disadvantage to paying a lease commission, then we are not complying with the spirit, and arguably the terms, of the Second Amendment.

As you will see from the language, the intention of the commission section is merely to have the proposer disclose what commission, if any, they have included in the rental amount so that the State can make any mathematical adjustments necessary to allow an apples to apples comparison of the rents. In this way, the State is not put in a position of determining whether or not a commission will be paid to JLL. The question and the adjustment are intended to be handled in the same way we will handle a situation where a proposer intends to deliver space that does not meet the Landlord Delivery Requirements. As you may recall, under that scenario, the proposer discloses deviations from the Landlord Delivery Requirements and then the State adjusts his proposal to take into account the fact that the State will have to pay the costs associated with bringing the space up to the Landlord Delivery Requirements standard.

As I mentioned to you, we believe that handling the commission issue in this manner levels the playing field with respect to the commission issue. We also believe it is compliant with the spirit and terms of the Second Amendment.

Please let me know if you would like to discuss this issue further. I have included a copy of the draft RFP amendment and the Second Amendment to the contract to this email for ease of reference.

Thanks,

Chloe

Chloe Truslow Shafer, Esq.

Real Estate Compliance Director

Department of General Services

312 Rosa L. Parks Avenue

Nashville, Tennessee 37243

Phone: 615.741.1348

Mobile: 615.210.2638

Email: chloe.shafer@tn.gov

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From: Terry Mason [<mailto:Terry.Mason@cot.tn.gov>]
Sent: Tuesday, May 14, 2013 2:37 PM
To: Aaron Flener
Cc: Chloe Shafer; Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Ron Colter; Janie Porter
Subject: RE: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Aaron,

During the discussions prior to the RFP's initial release, it was decided that the Real Estate Commission to JLL would not be included in the cost proposal. Please provide a detailed explanation of why it is being added via this amendment.

Thanks, Terry

From: Aaron Flener [<mailto:Aaron.Flener@tn.gov>]
Sent: Tuesday, May 14, 2013 2:07 PM
To: Terry Mason
Cc: Chloe Shafer; Fetz, John (US); Jeanneret, Barbara (US); Steve Berry; Ron Colter
Subject: Amendment Three for Nashville RFP 13-01-950, Chattanooga 13-01-951, Memphis 13-01-952

Terry,

Here are the Amendments I left you a message about yesterday. Please take a look at them and let me know if they are ready to go or if there are changes that need to be made. We would like to get them posted by tomorrow at 4:30.

Thank you.

Aaron Flener

Tenant Accounting Representative/RFP Coordinator
Dept. of General Services, STREAM
Tennessee Tower 22nd Floor
Office- (615) 741-3948